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September 25, 2006

TO: Temporary Co-chairpersons Senator Keith Kreiman, Senator David Miller, and Representative Kraig Paulsen, and Members of the Meskwaki Tribal Court Interim Study Committee

FROM: Rachele Hjelm, Legal Counsel, Legislative Services Agency

RE: Background Information

I. Introduction.

The purpose of this memorandum is to provide background information to the members of the Meskwaki Tribal Court Interim Study Committee. This memorandum and its attachments include the charge of the Committee; the tentative meeting agenda; proposed committee rules; information relating to the development of tribal law generally and the Meskwaki tribal court system in particular; a brief overview of legal principles and state policies relating to the recognition of tribal court judgments, decrees, and orders; and recent legislative activity in Iowa in regard to this issue.

II. Committee Charge.

The Committee was established by the Legislative Council pursuant to House Resolution 173. This resolution urged the General Assembly to continue with efforts to determine the proper manner for the Iowa court system to recognize civil judgments, decrees, and orders issued by the Meskwaki Tribal Court.

III. Overview of Tribal Court Systems.

Indian tribes possess an inherent right to resolve their tribal disputes through the use of traditional methods of dispute resolution utilizing their own ancient laws, traditions, and customs, subject to the plenary power of Congress to control Indian affairs.¹ The development of a formalized tribal court system within federally recognized tribes in the United States began in 1888 when the Commissioner of Indian Affairs established Courts of Indian Offenses (later known as CFR courts) to handle less serious criminal actions and to resolve civil disputes between tribal members. The CFR courts are operated and funded by the Bureau of Indian Affairs and apply law contained in the Code of Federal Regulations. The CFR courts are restricted from hearing

¹ William v. Lee, 358 U.S. 217 (1958), Cotton Petroleum Corp. v. New Mexico, 490 U.S. 163, 192 (1989).

internal tribal disputes and disputes involving non-Indians unless non-Indians expressly consent.²

In 1934, the Indian Reorganization Act was established to encourage Indian tribes to enact their own laws (tribal codes) and to establish their own justice systems.³ However, many Indian tribes decided not to establish their own justice systems and chose instead to be regulated under CFR courts due, in part, to a lack of financial resources. There are approximately 23 CFR courts in existence today.⁴

In 1953, Congress enacted Public Law 280 as the result of a perceived lack of law enforcement and court systems in regard to certain Indian reservations. This law granted Minnesota, Wisconsin, California, Nebraska, Oregon, and later Alaska, criminal and civil jurisdiction over certain offenses by or against Indians on Indian lands. This law also provided that any other state could assume such civil jurisdiction.⁵ In Public Law 280 states, tribes do not operate their own tribal courts or only operate tribal courts which hear very limited types of cases. In addition, in Public Law 280 states, state courts prosecute both Indian and non-Indians who commit crimes on Indian reservations and the state courts hear private disputes such as divorces, contract disputes, personal injury cases, and other matters that arise between both Indian and non-Indian parties.⁶

Currently, there are 299 tribal court systems, including CFR courts, in existence.⁷

IV. The Tribal Court of the Sac and Fox Tribe of the Mississippi in Iowa.

The Sac and Fox Tribe of the Mississippi in Iowa is a federally recognized tribe with land located on the Meskwaki Indian Settlement in central Iowa near the community of Tama, Iowa. The tribe owns 7,000 acres of land near the Iowa River. There are approximately 1,200 tribal members. An elected tribal council governs the tribe.⁸

The Tribal Court of the Sac and Fox Tribe of the Mississippi in Iowa was created by tribal council resolution on June 9, 2004.⁹ The resolution created a tribal court system consisting of a court of appeals, a trial court, and such lower or intermediate courts as the tribal council deems necessary to resolve disputes. Under the establishing authority, the Sac and Fox Tribe of the Mississippi in Iowa Tribal Code, the objective of the tribal court in resolving all matters before the tribal court is to "discover and determine the truth, and to the extent possible, to seek a resolution which restores balance to the community in accordance with the customs and traditions of the Tribe, repairs relationships, results in fairness, and avoids principles of retribution and punishment."¹⁰

² B.J. Jones, Role of Indian Tribal Courts in the Justice System, Native American Topic-Specific Monograph Series, March 2000, p.5 (hereinafter Jones).

³ 25 U.S.C. §§ 461-479 (1934).

⁴ National Tribal Resource Center, Tribal Court History, <http://www.tribalresourcecenter.org/tribalcourts/history.asp> (last visited September 21, 2006).

⁵ 18 U.S.C. § 1162. Iowa assumed jurisdiction over civil causes of actions between Indians or other persons or to which Indians or other persons are parties arising within the Sac and Fox Indian settlement in Tama county in 1967. Iowa Code § 1.12.

⁶ Jones at p. 6.

⁷ Hon. Elbidge Coochise, Jurisdiction of the Tribal Court, Presentation from August 25, 2006, Iowa State Bar Association CLE, p. 6 (hereinafter Coochise).

⁸ Constitution and By Laws of the Sac and Fox Tribe of the Mississippi in Iowa, Article X, §1.

⁹ Sac and Fox Tribe of the Mississippi in Iowa Tribal Council Resolution No. 12-2004.

¹⁰ Sac and Fox Tribe of the Mississippi in Iowa, Tribal Code, Title 5, Article II, ch. 1, § 5-2103.

The court consists of the Honorable Henry M. Buffalo, Jr., Chief Justice of the Appellate Court, the Honorable Elbidge Coochise, Chief Judge of the Trial Court, the Honorable Joseph Plumer, Associate Judge of the Trial Court, the Honorable Kimberly M. Vele, Associate Judge of the Trial Court, and Theresa Essmann Mahoney, Clerk of the Tribal Court, who staffs a full-time Tribal Court Clerk's Office. All judges are lawyers with extensive legal experience.¹¹ Judges are appointed by the tribal council for a term of years. The tribal court operates under tribal court rules of procedure.¹² The tribal judge's role is to interpret both written laws and unwritten laws with due consideration given to Meskwaki tribal norms, customs, and practices.¹³

V. State Court Recognition of Tribal Court Judgments.

The constitutionally mandated doctrine of full faith and credit means that one state court system will honor and enforce court decisions from other state court systems and has been legislatively applied to the federal courts.¹⁴ The federal common law doctrine of comity means that one court will recognize and honor another court's decisions primarily out of respect and courtesy for the other court's authority.¹⁵ The recognition of tribal court judgments utilizing a comity rationale by some states is based upon the theory that Indian tribes cannot be clearly classified as states or territories and therefore do not unambiguously qualify for full faith and credit.¹⁶

Whether based on the principles of full faith and credit or comity, or a combination of both, states have adopted various approaches in the recognition of tribal court judgments, decrees, and orders to include those authorized by case law, statute, or court rule:

Some states are highly respectful of tribal court civil judgments. Courts in Idaho, New Mexico, and Oklahoma, for example, accord tribal judgments full faith and credit giving tribal court judgments the same status accorded judgments from sister states. New Mexico and Idaho took such actions in court decisions. Oklahoma accorded full faith and credit through legislative authority and judicial rule.

At the other end of the spectrum is South Dakota. The South Dakota statute on recognition of tribal court judgments creates a strong presumption against recognition. A party seeking recognition of a tribal court judgment must prove by clear and convincing evidence numerous facts related to the legitimacy of the tribal judgment. If these facts are proven, then the judge may recognize the tribal judgment, but only in a narrow range of circumstances.¹⁷

In Iowa, full faith and credit is expressly granted to tribal courts under the Indian Child Welfare Act which provides that the state shall give full faith and credit to the public acts, records, judicial proceedings, and judgments of any Indian tribe applicable to Indian child custody proceedings.¹⁸

¹¹ <http://www.meskwakicourt.org> (last visited September 21, 2006).

¹² Sac and Fox Tribe of the Mississippi in Iowa Tribal Court Rules.

¹³ Coochise at p. 9.

¹⁴ U.S. CONST. art. IV, §1, 28 U.S.C. § 1738.

¹⁵ Jones at p. 3.

¹⁶ Kyme Allison McGaw, *Enforcing Tribal Court Judgments in State Court: Three Perspectives*, <http://www.msaj.com/papaers/kam0994.htm> (last visited September 21, 2006), p. 3.

¹⁷ Kevin K. Washburn, *A Different Kind of Symmetry*, 34 New Mexico L. Rev. 263, 268 (2004) (citations omitted).

¹⁸ Iowa Code § 232B.5 (15) (2005). See also Iowa Code § 235B.2 (2005) ("The state is committed to protecting the essential tribal relations and best interest of an Indian child by promoting practices, in accordance with the federal Indian Child Welfare Act and other applicable law, designed to prevent the child's voluntary or involuntary out-of-home placement and, whenever such placement is necessary or ordered, by placing the child, whenever possible, in a foster home, adoptive home, or other type of custodial placement that reflects the unique values of the child's tribal culture and is best able to assist the child in establishing, developing, and maintaining a political, cultural, and social relationship with the child's tribe and tribal community.")

The Indian Child Welfare Act passed by the General Assembly in 2003 and modeled after the federal Indian Child Welfare Act, was enacted to address a concern about welfare practices that resulted in the separation of large numbers of Indian children from their families and tribes through adoption or foster care placement, usually in non-Indian homes.¹⁹ In addition, Iowa has a statutory provision granting full force and effect to tribal ordinances and customs adopted by the governing council of the Sac and Fox Indian settlement in Tama county not inconsistent with any applicable civil law of the state.²⁰

In addition to the federal Indian Child Welfare Act, certain other federal laws have been interpreted to require all states to recognize the orders of tribal courts, including the Child Support Orders Act which requires recognition of child support orders and the Violence Against Women Act which requires recognition of domestic violence protective orders.²¹

VI. 2005 and 2006 Legislative Actions.

In 2005, the General Assembly adopted legislation urging the Iowa Supreme Court to study the interaction between the Iowa Court System and federally recognized tribal courts and to consider developing and prescribing court rules that relate to the tribal court system, tribal court orders, judgments, and decrees.²² This bill passed both chambers and was signed by the Governor on July 14, 2005. No subsequent action was taken by the Iowa Supreme Court in regard to this legislation.

In addition to the legislation urging creation of this study committee, the 2006 House and Senate Judiciary Committees proposed House Study Bill 615 and Senate Study Bill 3121, respectively, relating to the recognition of a civil judgment, decree, or order of the Tribal Court of the Sac and Fox Tribe of the Mississippi in Iowa. These bills provide that a civil judgment, decree, or order issued by the tribal court may be recognized and enforced in the same manner as a judgment, decree, or order of the district court of this state, provided that said tribe has established a reciprocal provision with the courts of this state. No further action was taken on either bill.

VII. Attachments.

The following documents are attached to this background statement:

Attachment A: Tentative Agenda for September 29 Meeting

Attachment B: Proposed Committee Rules

Attachment C: Legislation Requesting the Study Committee
House Resolution 173

Attachment D: House File 807 (2005)

Attachment E: House Study Bill 615 and Senate Study Bill 3121
(2006)

Attachment F: Sac and Fox Tribe of the Mississippi in Iowa Tribal
Court Rules

¹⁹ Iowa Code Chapter 232B; 25 U.S.C. § 1911.

²⁰ Iowa Code § 1.14 (2005).

²¹ 28 USC § 1738B; 28 U.S.C. § 2265.

²² 2005 Iowa Acts, ch. 171, § 7 (HF 807).

MESKWAKI TRIBAL COURT INTERIM STUDY COMMITTEE

MEMBERSHIP

***Senator Keith Kreiman, Co-chair
Senator David Miller, Co-chair
Senator Dennis H. Black
Senator Brad Zaun***

***Representative Kraig Paulsen,
Co-chair
Representative Lance Horbach
Representative Kevin McCarthy
Representative Kurt Swaim
Representative Jim Van Fossen***

Tentative Agenda September 29, 2006 Room 22, State Capitol 9:00 a.m. to 3:00 p.m.

- 9:00 a.m. Call to Order
 Roll Call
 Adoption of Rules
 Election of Co-chairpersons
 Opening Remarks by Co-chairpersons
- 9:15 a.m. Honorable Elbidge Coochise, Chief Judge, Meskwaki Tribal Court
- 10:00 a.m. Theresa Essman-Mahoney, Clerk of Court, Meskwaki Tribal Court
- 11:00 a.m. Nancy Burke, Attorney, Burke Law Offices, Toledo, Iowa
- 12:00 p.m. Lunch (on own)
- 12:30 p.m. Joe Little, Acting Associate Director, Bureau of Indian Affairs, Division of Tribal Support, Albuquerque, New Mexico (via speakerphone)
- 1:30 p.m. Dennis Johnson, Attorney, Dorscy & Whitney, Des Moines, Iowa
- 2:30 p.m. Committee Discussion
- 3:00 p.m. Adjournment

PROPOSED RULES
MESKWAKI TRIBAL COURT INTERIM STUDY COMMITTEE

1. A majority of the voting members of each house shall constitute a quorum, but a lesser number of members may adjourn or recess the Committee in the absence of a quorum.
2. A majority vote of those voting members present is necessary to carry any action; however, no recommendations to the Legislative Council or General Assembly may be adopted without the affirmative votes of at least a majority of the members of each house.
3. Whenever Mason's Manual of Legislative Procedure does not conflict with the rules specifically adopted by the Committee, Mason's Manual of Legislative Procedure shall govern the deliberations of the Committee.
4. Meetings shall be set by motion before adjournment, or by call of the Co-chairpersons of the Committee if meetings are necessary before the date set in the motion.
5. Rules shall be adopted by the affirmative votes of at least a majority of the members of each house and may only be changed or suspended by a similar vote of the Committee.

Submitted:

Attachment C

House Resolution 173 - Introduced

PAG LIN

1 1 HOUSE RESOLUTION NO. ____
1 2 BY EICHHORN, PAULSEN, and SWAIM
1 3 A Resolution urging the General Assembly to continue
1 4 the work begun during the 2006 Legislative Session
1 5 in determining the proper manner for the Iowa court
1 6 system to recognize civil judgments, decrees, and
1 7 orders issued by the Meskwaki Tribal Court.
1 8 WHEREAS, the Meskwaki Settlement has existed within
1 9 the borders of the state of Iowa near Tama since 1857,
1 10 and the Sac and Fox tribe of the Mississippi in Iowa
1 11 is a federally recognized tribe; and
1 12 WHEREAS, the Meskwaki Nation and the state of Iowa
1 13 have an established government-to-government
1 14 relationship that is based on mutual respect which has
1 15 resulted in cooperative efforts, including legislation
1 16 creating landmark laws such as the Iowa Indian Child
1 17 Welfare Act and the reestablishment of the tribe's
1 18 right to control the taking of game on its own land;
1 19 and
1 20 WHEREAS, the Meskwaki Nation previously operated a
1 21 tribal court in the 1930s and, after several years of
1 22 study by past councils and input from tribal members,
1 23 the present tribal council has recently established a
1 24 tribal court to handle civil matters between and
1 25 concerning tribal members; and
1 26 WHEREAS, the Meskwaki Nation is in the process of
1 27 amending its Constitution to incorporate the creation
1 28 of the tribal court into the Constitution, along with
1 29 other progressive reforms initiated by the current
1 30 tribal council; and
2 1 WHEREAS, while nearly 300 tribal courts exist in
2 2 the United States, the Meskwaki Tribal Court is the
2 3 first tribal court established within Iowa's borders;
2 4 and
2 5 WHEREAS, the Meskwaki Tribal Court, while giving
2 6 consideration to tribal customs and traditions,
2 7 operates under rules of procedure that are similar to
2 8 the rules of procedure used by state and federal
2 9 courts, including rules that address a party's
2 10 appropriate notice and opportunity to be heard; and
2 11 WHEREAS, the tribal council is in the process of
2 12 adopting laws granting reciprocal full faith and
2 13 credit to orders from state courts, and the tribal
2 14 court has already given full faith and credit to
2 15 orders from Iowa district courts; and
2 16 WHEREAS, in recruiting judges to hear cases in the
2 17 Meskwaki Tribal Court, the tribal council sought some
2 18 of the nation's leading judges familiar with tribal
2 19 court caseloads, including two judges who serve on the
2 20 board of directors for the National American Indian
2 21 Court Judges Association; and

2 22 WHEREAS, the Chief Judge of the 6th Judicial
 2 23 District supported the creation of the Meskawki Tribal
 2 24 Court, and the United States Supreme Court and the
 2 25 United States Congress have taken steps to support the
 2 26 creation and operation of tribal courts across the
 2 27 country; and

2 28 WHEREAS, the General Assembly adopted legislation
 2 29 during the 2005 Legislative Session asking the Iowa
 2 30 Supreme Court to study whether a court rule should be
 3 1 created to recognize civil judgments, orders, and
 3 2 decrees issued by the Meskwaki Tribal Court, and the
 3 3 General Assembly, during the 2006 Legislative Session
 3 4 dedicated a significant amount of time to determining
 3 5 the proper manner in which to recognize civil
 3 6 judgments, orders, and decrees issued by the Meskwaki
 3 7 Tribal Court; NOW THEREFORE,

3 8 BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES,
 3 9 That the House of Representatives firmly supports the
 3 10 cross-education of state, local, and tribal officials
 3 11 concerning state, local, and tribal systems of law and
 3 12 jurisdictional authority; and

3 13 BE IT FURTHER RESOLVED, That the House of
 3 14 Representatives recognizes the right of the Sac and
 3 15 Fox tribe of the Mississippi in Iowa to form a tribal
 3 16 court with the ability to resolve disputes emanating
 3 17 from the tribe, and believes that a tribal court can
 3 18 bring a special perspective and unique insight to
 3 19 issues involving the Meskwaki Nation and tribal
 3 20 members; and

3 21 BE IT FURTHER RESOLVED, That the House of
 3 22 Representatives also believes that the Meskawki Tribal
 3 23 Court will not only benefit members of the tribe, but
 3 24 may benefit the state of Iowa and all of its citizens;
 3 25 and

3 26 BE IT FURTHER RESOLVED, That the House of
 3 27 Representatives urges members of the judicial branch
 3 28 of state government, members of the Iowa legal
 3 29 community, members of law enforcement, and all
 3 30 affected Iowa citizens to establish a working
 4 1 relationship with the Sac and Fox tribe of the
 4 2 Mississippi in Iowa, and in particular, the Meskwaki
 4 3 Tribal Court, to maximize understanding of the tribe's
 4 4 legal system, including but not limited to due process
 4 5 considerations, and to ensure strong communication
 4 6 between the tribal legal system and the legal system
 4 7 for the state of Iowa; and

4 8 BE IT FURTHER RESOLVED, That the House of
 4 9 Representatives urges the next General Assembly to
 4 10 continue the work begun by this General Assembly in
 4 11 determining the proper reciprocal manner for the Iowa
 4 12 court system and the Meskwaki Tribal Court system to
 4 13 recognize civil judgments, decrees, and orders issued
 4 14 by the respective courts.

4 15 LSB 6700HH 81

4 16 rh:nh/gg/14.1

House File 807 - Enrolled

Attachment D
(See section 7)

PAG LIN

HOUSE FILE 807

1 1

1 2

1 3

AN ACT

1 4 RELATING TO AND MAKING APPROPRIATIONS TO THE JUDICIAL BRANCH,

1 5 AND PROVIDING AN EFFECTIVE DATE.

1 6

1 7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 8

1 9

JUDICIAL BRANCH

1 10 Section 1. JUDICIAL BRANCH.

1 11 1. There is appropriated from the general fund of the
1 12 state to the judicial branch for the fiscal year beginning
1 13 July 1, 2005, and ending June 30, 2006, the following amounts,
1 14 or so much thereof as is necessary, to be used for the
1 15 purposes designated:

1 16 a. For salaries of supreme court justices, appellate court
1 17 judges, district court judges, district associate judges,
1 18 judicial magistrates and staff, state court administrator,
1 19 clerk of the supreme court, district court administrators,
1 20 clerks of the district court, juvenile court officers, board
1 21 of law examiners and board of examiners of shorthand reporters
1 22 and judicial qualifications commission, receipt and
1 23 disbursement of child support payments, reimbursement of the
1 24 auditor of state for expenses incurred in completing audits of
1 25 the offices of the clerks of the district court during the
1 26 fiscal year beginning July 1, 2005, and maintenance,
1 27 equipment, and miscellaneous purposes:

1 28 \$118,404,282

1 29 b. For an initial grant to be determined by the state
1 30 court administrator, for the establishment of a youth
1 31 enrichment pilot project located in a county with a population
1 32 greater than three hundred thousand that is involved in a
1 33 public and private partnership pursuing life skills,
1 34 education, and mentoring programs for offenders between the
1 35 ages of sixteen and twenty-two who have been charged with a
2 1 felony:

2 2 \$ 100,000

2 3 2. The judicial branch, except for purposes of internal
2 4 processing, shall use the current state budget system, the
2 5 state payroll system, and the Iowa finance and accounting
2 6 system in administration of programs and payments for
2 7 services, and shall not duplicate the state payroll,
2 8 accounting, and budgeting systems.

2 9 3. The judicial branch shall submit monthly financial
2 10 statements to the legislative services agency and the
2 11 department of management containing all appropriated accounts
2 12 in the same manner as provided in the monthly financial status
2 13 reports and personal services usage reports of the department
2 14 of administrative services. The monthly financial statements
2 15 shall include a comparison of the dollars and percentage spent
2 16 of budgeted versus actual revenues and expenditures on a
2 17 cumulative basis for full-time equivalent positions and
2 18 dollars.

2 19 4. The judicial branch shall focus efforts upon the
2 20 collection of delinquent fines, penalties, court costs, fees,

2 21 surcharges, or similar amounts.

2 22 5. It is the intent of the general assembly that the
2 23 offices of the clerks of the district court operate in all
2 24 ninety-nine counties and be accessible to the public as much
2 25 as is reasonably possible in order to address the relative
2 26 needs of the citizens of each county.

2 27 6. The judicial branch shall study the best practices and
2 28 efficiencies of each judicial district. In identifying the
2 29 most efficient judicial districts and the districts using best
2 30 practices, the judicial branch shall consider the average cost
2 31 to the judicial branch for processing each classification of
2 32 criminal offense or civil action and the overall number of
2 33 cases filed. The judicial branch shall file a report
2 34 regarding the study made and actions taken pursuant to this
2 35 subsection with the cochairpersons and ranking members of the
3 1 joint appropriations subcommittee on the justice system and to
3 2 the legislative services agency by December 15, 2005.

3 3 7. In addition to the requirements for transfers under
3 4 section 8.39, the judicial branch shall not change the
3 5 appropriations from the amounts appropriated to the judicial
3 6 branch in this Act, unless notice of the revisions is given
3 7 prior to their effective date to the legislative services
3 8 agency. The notice shall include information on the branch's
3 9 rationale for making the changes and details concerning the
3 10 workload and performance measures upon which the changes are
3 11 based.

3 12 8. The judicial branch shall submit a semiannual update to
3 13 the legislative services agency specifying the amounts of
3 14 fines, surcharges, and court costs collected using the Iowa
3 15 court information system since the last report. The judicial
3 16 branch shall continue to facilitate the sharing of vital
3 17 sentencing and other information with other state departments
3 18 and governmental agencies involved in the criminal justice
3 19 system through the Iowa court information system.

3 20 9. The judicial branch shall provide a report to the
3 21 general assembly by January 1, 2006, concerning the amounts
3 22 received and expended from the enhanced court collections fund
3 23 created in section 602.1304 and the court technology and
3 24 modernization fund created in section 602.8108, subsection 5,
3 25 during the fiscal year beginning July 1, 2004, and ending June
3 26 30, 2005, and the plans for expenditures from each fund during
3 27 the fiscal year beginning July 1, 2005, and ending June 30,
3 28 2006. A copy of the report shall be provided to the
3 29 legislative services agency.

3 30 Sec. 2. JUDICIAL RETIREMENT FUND. There is appropriated
3 31 from the general fund of the state to the judicial retirement
3 32 fund for the fiscal year beginning July 1, 2005, and ending
3 33 June 30, 2006, the following amount, or so much thereof as is
3 34 necessary, to be used for the purpose designated:

3 35 Notwithstanding section 602.9104, for the state's
4 1 contribution to the judicial retirement fund in the amount of
4 2 9.7 percent of the basic salaries of the judges covered under
4 3 chapter 602, article 9:

4 4 \$ 2,039,664

4 5 Sec. 3. Section 602.6401, subsection 1, Code 2005, is
4 6 amended to read as follows:

4 7 1. ~~One Two~~ hundred ~~ninety-one~~ six magistrates shall be
4 8 apportioned among the counties as provided in this section.
4 9 Magistrates appointed pursuant to section 602.6402 shall not
4 10 be counted for purposes of this section.

4 11 Sec. 4. NEW SECTION. 602.8102A NOTICES RETURNED FOR
4 12 UNKNOWN ADDRESS == RESENDING.

4 13 Notwithstanding any other provision of the Code to the
4 14 contrary, and subject to rules prescribed by the supreme
4 15 court, if the clerk of the district court sends a mailing or
4 16 notice to a person or party and the mailing or notice is
4 17 returned by the postal service to the clerk of the district
4 18 court as undeliverable, the clerk is not required to send a
4 19 repeat or subsequent mailing or notice unless the clerk
4 20 receives an updated mailing address.

4 21 Sec. 5. Section 602.8105, subsection 2, Code 2005, is
4 22 amended to read as follows:

4 23 2. The clerk of the district court shall collect the
4 24 following fees for miscellaneous services:

4 25 a. For filing, entering, and endorsing a mechanic's lien,
4 26 twenty dollars, and if a suit is brought, the fee is taxable
4 27 as other costs in the action.

4 28 b. For filing and entering an agricultural supply dealer's
4 29 lien and any other statutory lien, twenty dollars.

4 30 c. For a certificate and seal, ten dollars. However,
4 31 there shall be no charge for a certificate and seal to an
4 32 application to procure a pension, bounty, or back pay for a
4 33 member of the armed services or other person.

4 34 d. For certifying a change in title of real estate, twenty
4 35 dollars.

5 1 e. For filing a praecipe to issue execution under chapter
5 2 626, twenty-five dollars.

5 3 f. For filing a praecipe to issue execution under chapter
5 4 654, fifty dollars.

5 5 g. For filing a confession of judgment under chapter 676,
5 6 fifty dollars if the judgment is five thousand dollars or
5 7 less, and one hundred dollars if the judgment exceeds five
5 8 thousand dollars.

5 9 ~~e~~ h. Other fees provided by law.

5 10 Sec. 6. Section 901.4, Code 2005, is amended to read as
5 11 follows:

5 12 901.4 PRESENTENCE INVESTIGATION REPORT CONFIDENTIAL ==
5 13 DISTRIBUTION.

5 14 The presentence investigation report is confidential and
5 15 the court shall provide safeguards to ensure its
5 16 confidentiality, including but not limited to sealing the
5 17 report, which may be opened only by further court order. At
5 18 least three days prior to the date set for sentencing, the
5 19 court shall ~~serve~~ send a copy of all of the presentence
5 20 investigation report ~~upon~~ by ordinary or electronic mail, to
5 21 the defendant's attorney and the attorney for the state, and
5 22 the report shall remain confidential except upon court order.
5 23 However, the court may conceal the identity of the person who
5 24 provided confidential information. The report of a medical
5 25 examination or psychological or psychiatric evaluation shall
5 26 be made available to the attorney for the state and to the
5 27 defendant upon request. The reports are part of the record
5 28 but shall be sealed and opened only on order of the court. If
5 29 the defendant is committed to the custody of the Iowa
5 30 department of corrections and is not a class "A" felon, a copy
5 31 of the presentence investigation report shall be forwarded by
5 32 ordinary or electronic mail to the director with the order of
5 33 commitment by the clerk of the district court and to the board
5 34 of parole at the time of commitment. Pursuant to section
5 35 904.602, the presentence investigation report may also be

6 1 released by ordinary or electronic mail by the department of
 6 2 corrections or a judicial district department of correctional
 6 3 services to another jurisdiction for the purpose of providing
 6 4 interstate probation and parole compact or interstate compact
 6 5 for adult offender supervision services or evaluations, or to
 6 6 a substance abuse or mental health services provider when
 6 7 referring a defendant for services. The defendant or the
 6 8 defendant's attorney may file with the presentence
 6 9 investigation report, a denial or refutation of the
 6 10 allegations, or both, contained in the report. The denial or
 6 11 refutation shall be included in the report. If the person is
 6 12 sentenced for an offense which requires registration under
 6 13 chapter 692A, the court shall release the report by ordinary
 6 14 or electronic mail to the department.

6 15 Sec. 7. STUDY OF COURT RULES RELATING TO TRIBAL COURTS.

6 16 The general assembly acknowledges that contact and interaction
 6 17 between the Iowa court system and federally recognized tribal
 6 18 courts are ever increasing and the general assembly urges the
 6 19 Iowa supreme court to study this interaction and consider
 6 20 developing and prescribing rules that relate to the tribal
 6 21 court system, tribal court orders, judgments, and decrees.

6 22 Sec. 8. Section 607A.8, Code 2005, is amended to read as
 6 23 follows:

6 24 607A.8 FEES AND EXPENSES FOR JURORS.

6 25 Grand jurors and petit jurors in all courts shall receive
 6 26 ten dollars as compensation for each day's service or
 6 27 attendance, including attendance required for the purpose of
 6 28 being considered for service, reimbursement for mileage
 6 29 expenses at the rate specified in section 602.1509 for each
 6 30 mile traveled each day to and from their residences to the
 6 31 place of service or attendance, and reimbursement for actual
 6 32 expenses of parking, as determined by the clerk. The supreme
 6 33 court may adopt rules that allow additional compensation for
 6 34 jurors whose attendance and service exceeds seven days. A

6 35 juror who is a person with a disability may receive
 7 1 reimbursement for the costs of alternate transportation from
 7 2 the juror's residence to the place of service or attendance.
 7 3 A juror shall not receive reimbursement for mileage expenses
 7 4 or actual expenses of parking when the juror travels in a
 7 5 vehicle for which another juror is receiving reimbursement for
 7 6 mileage and parking expenses.

7 7 Sec. 9. APPOINTMENT OF CLERK OF COURT. The appointment of
 7 8 a clerk of the district court shall not occur unless the state
 7 9 court administrator approves the appointment.

7 10 Sec. 10. POSTING OF REPORTS IN ELECTRONIC FORMAT ==
 7 11 LEGISLATIVE SERVICES AGENCY. All reports or copies of reports
 7 12 required to be provided by the judicial branch for fiscal year
 7 13 2005=2006 to the legislative services agency shall be provided
 7 14 in an electronic format. The legislative services agency
 7 15 shall post the reports on its internet site and shall notify
 7 16 by electronic means all the members of the joint
 7 17 appropriations subcommittee on the justice system when a
 7 18 report is posted. Upon request, copies of the reports may be
 7 19 mailed to members of the joint appropriations subcommittee on
 7 20 the justice system.

7 21 Sec. 11. EFFECTIVE DATE. The section of this Act
 7 22 appropriating funds that are contingent upon the general fund
 7 23 of the state receiving funds from the Microsoft settlement,
 7 24 being deemed of immediate importance, takes effect upon
 7 25 enactment.

7 26

7 27

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7 29

CHRISTOPHER C. RANTS
Speaker of the House

7 30

7 31

7 32

7 33

7 34

JOHN P. KIBBIE
President of the Senate

7 35

8 1

8 2 I hereby certify that this bill originated in the House and
8 3 is known as House File 807, Eighty-first General Assembly.

8 4

8 5

8 6

8 7

MARGARET THOMSON
Chief Clerk of the House

8 8

8 9 Approved _____, 2005

8 10

8 11

8 12

8 13 THOMAS J. VILSACK

8 14 Governor

Attachment E

House Study Bill 615

HOUSE FILE
 BY (PROPOSED COMMITTEE ON
 JUDICIARY BILL BY
 CHAIRPERSON PAULSEN)

Passed House, Date _____ Passed Senate, Date _____
 Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
 Approved

A BILL FOR

1 An Act relating to the recognition of a civil judgment, decree,
 2 or order of the tribal court of the Sac and Fox Indian tribe
 3 of the Mississippi in Iowa.
 4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
 5 TLSB 6399YC 81
 6 rh/je/5

PAG LIN

1 1 Section 1. Section 626A.1, Code 2005, is amended to read
 1 2 as follows:
 1 3 626A.1 DEFINITION.
 1 4 As used in this chapter unless the context otherwise
 1 5 requires, "foreign judgment" means a judgment, decree, or
 1 6 order of a court of the United States or of any other court
 1 7 which is entitled to full faith and credit in this state. For
 1 8 purposes of this chapter, "foreign judgment" includes a
 1 9 judgment, decree, or order of the tribal court of the Sac and
 1 10 Fox tribe of the Mississippi in Iowa provided that such tribe
 1 11 has established a reciprocal provision with the courts of this
 1 12 state.

EXPLANATION

1 13
 1 14 This bill relates to the recognition of a civil judgment,
 1 15 decree, or order of the tribal court of the Sac and Fox tribe
 1 16 of the Mississippi in Iowa.
 1 17 The bill provides that a civil judgment, decree, or order
 1 18 issued by the tribal court of the Sac and Fox tribe of the
 1 19 Mississippi in Tama county may be recognized and enforced in
 1 20 the same manner as a judgment, decree, or order of the
 1 21 district court of this state, subject to the procedural
 1 22 requirements of Code chapter 626A.
 1 23 The tribal court of the Sac and Fox tribe of the
 1 24 Mississippi was established by tribal council resolution on
 1 25 June 9, 2004, and created an integrated judicial department
 1 26 consisting of a court of appeals, trial court, and such lower
 1 27 or intermediate courts as the tribal council deems necessary.
 1 28 LSB 6399YC 81
 1 29 rh:rj/je/5

Senate Study Bill 3121

SENATE FILE
 BY (PROPOSED COMMITTEE ON
 JUDICIARY BILL BY
 CO=CHAIRPERSONS KREIMAN
 AND MILLER)

Passed Senate, Date _____ Passed House, Date _____
 Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays
 Approved

A BILL FOR

1 An Act relating to the recognition of a civil judgment, decree,
 2 or order of the tribal court of the Sac and Fox Indian tribe
 3 of the Mississippi in Iowa.
 4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
 5 TLSB 6399XC 81
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 1 28 LSB 6399XC 81
 1 29 rh:rj/je/5

SAC AND FOX TRIBE OF THE MISSISSIPPI IN IOWA TRIBAL COURT RULES

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SAC AND FOX TRIBE OF THE MISSISSIPPI IN IOWA TRIBAL COURT RULES

GENERAL RULES

RULE G - 1. SCOPE AND CONSTRUCTION OF RULES

- a. *Scope.* Except when different rules prescribed in this Code specifically apply, these rules shall govern the procedure in any Court of the Sac and Fox Tribe of the Mississippi in Iowa.
- b. *Rules of Construction.* The following rules of construction shall apply to all Court rules.
 - i. Where a more general rule of procedure conflicts with a more specific rule of procedure, the more specific rule of procedure shall be applied.
 - ii. Where a rule of procedure conflicts with a statute, the statute shall control.
 - iii. The term plaintiff includes a plaintiff, petitioner, claimant, or any similar term. The term defendant includes a defendant, respondent, or similar term. The term counsel means a person admitted to the bar of the Tribal Court, whether that person is an attorney or lay-advocate.
 - iv. No rule of procedure shall be construed to extend or limit the jurisdiction of the Appellate Court or Trial Court.
 - v. No Rule of Procedure shall be construed to create or expand a waiver of the sovereign or official immunity of the Tribe, its officers, or its agencies.
 - vi. These rules shall be liberally construed to secure a just, speedy, and inexpensive determination of every action.
- c. *Absence of Rule.* Where these rules do not provide a mode of proceeding, the Court may adopt any suitable mode of proceeding.
- d. *Tribal Dispute Resolution.* The Court, in its discretion, may apply a mode of proceeding that is faithful to Meskwaki ways of being and allows resolution of a matter without argument and aggression.

RULE G - 2. SERVICE AND FILING OF PLEADINGS AND PAPERS OTHER THAN PROCESS

- a. *Service required.* Except as otherwise provided in these Rules, every paper (which includes every order required by its terms to be served, every pleading

subsequent to the original complaint or petition, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, brief, designation of record on appeal, and similar paper) shall be served upon each of the parties or their counsel of reference.

- b. *Service by Hand Delivery and Mail.* Except for process, as defined in Rule C-4(c), and absent law or Court order to the contrary, service of any paper may be made by serving the paper as if it were process, or by placing the paper, properly addressed, in the United States mail for first class delivery, or by placing the paper, properly addressed for delivery by other comparably reliable means.
- c. *Service by other means.* Service by facsimile, email, or other electronic means is allowed upon written permission of the party served.
- d. *Service in property seizure cases.* In an action begun by seizure of property, in which no person need be or is named as defendant, any service required to be made prior to the filing of an answer, claim or appearance shall be made upon the person having custody or possession of the property at the time of its seizure.
- e. *Filing.* A pleading or other paper is filed with a Court by delivering it to the Clerk of that Court, except that a judge may permit any paper to be filed with the judge. Unless otherwise required by law or Court order, delivery to the Clerk is completed upon placing the paper, properly addressed to the Clerk, in the United States mail for first class delivery, or by placing the paper, properly addressed for delivery by other comparably reliable means. Filing by facsimile, email, or other electronic means is permitted only upon order of the Court.

RULE G - 3. TIME

- a. *Computation of time.* In computing any period of time set forth herein, the day from which the period is to commence shall not be counted and the last day of the period shall be counted, unless it is a Saturday, Sunday, or legal holiday under Sac and Fox Tribe of the Mississippi in Iowa Code or a day on which the weather or other conditions have made the office of the clerk of court inaccessible, in which event the period runs until the end of the next day which is not one of the aforementioned days. When the period of time prescribed or allowed by these rules is less than 11 days, intermediate Saturdays, Sundays, or legal holidays shall be excluded in the computation.
- b. *Enlargement and shortening time.* The Court for good cause shown may enlarge or shorten the prescribed period of time within which any required act may be done.
- c. *Additional Time after Service.* Whenever service is accomplished by mail, facsimile, email, or other electronic service, three days shall be added to the

prescribed period of time, but such addition shall not cause Saturdays, Sundays, or legal holidays to be counted in the time period if they would not otherwise have been counted.

RULE G - 4. FORMS OF PAPERS; REPRESENTATIONS TO COURT; SANCTIONS

- a. *Caption.* The first page of every paper filed with the Court (other than exhibits or attachments to other documents which comply with this rule) shall contain the name of the Court and name of the parties in a manner consistent with Sac and Fox of the Mississippi in Iowa Code section 5-4301(d), the Court file number (if known), and a designation as to what kind of paper it is.
- b. *Signature Block.* Every paper shall be signed by at least one counsel of record in the individual name of the counsel, or, if the party is not represented by counsel, shall be signed by the party or his/her authorized representative. Each paper shall state the signer's address and telephone number, if any. An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the counsel, party, or representative.
- c. *Representations to Court.* By presenting to the Court, whether by signing, filing, submitting, or later advocating a pleading, written motion, or other paper, counsel or unrepresented party is certifying, to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, that:
 - i. It is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
 - ii. The claims, defenses, and other legal contentions therein are warranted under existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
 - iii. The allegations and other factual contentions contain evidentiary support, or, if specifically so identified are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery;
 - iv. The denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information and belief; and
 - v. The submission, when read together with other submissions which have been or are expected to be submitted by other parties, will provide the Court with all relevant facts and other matters and circumstances known or within the control of the person signing the document which will enable the Court to determine the truth and make a proper, informed, and just

decision, whether or not the fact, matters, or circumstances are adverse or exculpatory.

- d. *Duty to Supplement.* Where a person makes a representation to the Court, as defined in subsection (c), the person has a duty to supplement the submission where the person determines that the representation is inaccurate or incomplete. A representation is inaccurate or incomplete if the party would no longer provide the identical submission if being required to make the submission anew. The duty to supplement continues until the case, including any appeals therefrom, is finally concluded.
- e. *Sanctions.* If, after notice and a reasonable opportunity to respond, the Court determines that subdivision (c) or (d) has been violated, the Court shall impose an appropriate sanction upon the party, counsel, or counsel's firm that violated subdivisions (c) or (d) or that was responsible for the violation.

RULE G - 5. ADMISSION AND REGULATION OF LEGAL COUNSEL

- a. *Bar Admission Required.* No attorney or lay-advocate admitted to the bar of any other tribe, state, or federal court may appear in any Court or administrative adjudicatory forum of the Tribe unless the attorney or lay-advocate is admitted to the Sac and Fox Tribe of the Mississippi in Iowa Tribal Court Bar. No other person may appear in any court or administrative forum of the Tribe on behalf of any person or entity unless the person is a member of the Bar of the Sac and Fox Tribe of the Mississippi in Iowa, except that a non-individual party may appear through an officer of the non-individual party, provided that such appearance is properly authorized under the non-individual party's governing documents, and further provided that the Court may, in its discretion, require that a non-individual party appear only through an attorney.
- b. *Application Procedure.* Any person may apply to become a member of the Bar of the Sac and Fox Tribe of the Mississippi in Iowa by submitting a Motion for Admission to the Court of Appeals and an annual, non-refundable application fee of \$100.00. The Motion must contain the applicant's sworn statement that the applicant has reviewed the Tribe's statutory laws and Court rules, that applicant consents to the jurisdiction of the Tribe for all matters related to the application for admission and all other conduct by the applicant, whether before or after admission and whether by appearance, written submission, or otherwise, in the Tribe's courts and administrative adjudicatory fora.
- c. *Admission.* After the application has been received by the Court of Appeals, the Court shall act on the application. Where the applicant is an attorney, licensed to practice before the highest court of the United States, any Tribe, or any state and the applicant establishes that the applicant is a member in good standing before every court to which the applicant is admitted, the Court shall rebuttably presume

that the applicant is fit for admission to the Court Bar. In all other cases, the Court shall rebuttably presume that the applicant is not fit, and the Court shall require that applicant establish fitness to practice. The Court may, but need not, require applicant to personally appear before the Court prior to admission. Following admission, it is the attorney's duty to notify the Court of any change in status regarding admission in any other jurisdiction.

- d. *Oath.* After admission, and prior to taking any action in any matter, applicant must subscribe to the following oath or affirmation:

"I, _____ do solemnly swear [or affirm] that I will conduct myself as an attorney and counselor of the Court of the Sac and Fox Tribe of the Mississippi in Iowa, uprightly and according to law, that in every proceeding I will comply with my duty to ensure that all necessary, helpful, and relevant facts are discovered such that the Court can determine the truth and make a proper, informed, and just decision, and that I will uphold and support the Constitution of the Sac and Fox Tribe of the Mississippi in Iowa and the laws of the Tribe."

- e. *Temporary Admission.* Where an attorney, licensed to practice before the highest court of the United States, any other tribe, or any state, moves to appear in a matter, either while the movant has an application for regular admission pending or otherwise, the Court may admit the movant to appear in a specific matter. The motion must contain the movant's sworn statement that the movant has reviewed the Tribe's statutory laws and Court rules, that movant consents to the jurisdiction of the Tribe for all matters related to the motion to appear and all other conduct by the movant, whether before or after the motion is ruled upon whether by appearance, written submission, or otherwise, in the Tribe's courts and administrative adjudicatory fora. Where a movant has also applied for regular admission, there shall be no fee for the motion to appear pro hac vice.

- f. *Suspension, disbarment, or discipline.*

- i. *Standard.* A member of the Bar is subject to suspension or disbarment by the Court if the member is guilty of conduct unbecoming a member of the Court's bar.
- ii. *Procedure.* The member must be given notice and an opportunity to show good cause, within the time prescribed by the Court of Appeals, why the member should not be suspended or disbarred.
- iii. *Order.* In any case where the Court of Appeals provides notice under subsection (ii), it shall subsequently issue a written order, appropriate under the facts of the case. There shall be no right to appeal from such order.

g. *Discipline.*

- i. **Standard.** Any Court may discipline counsel who practices before it for conduct unbecoming a member of the Bar or for failure to comply with any Court rule.
- ii. **Procedure.** The Court may impose appropriate discipline immediately only if the conduct occurs in open Court. In all other cases, the Bar member must be provided notice and an opportunity to show cause why disciplinary measures should not be taken.
- iii. **Order.** In any case where the Court provides notice under subsection (ii), it shall subsequently issue a written order, appropriate under the facts of the case. There shall be no right to appeal when the order is issued by the Court of Appeals, but appeal from orders of the Trial Court are permitted.

RULE G - 6. DISABILITY OR DISQUALIFICATION OF A JURIST

- a. *Jurist's inability to proceed.* If by reason of death, sickness, or other disability, a jurist is unable to perform his or her duties in a case after a matter is heard but before the jurist signs the order from the hearing, then the Chief Justice (for appellate court matters) or Chief Judge (for trial court matters) shall assign any other jurist regularly sitting in or assigned to the Court to perform those duties; but if the Court is subsequently satisfied that it cannot perform those duties because the replacing judge or justice did not preside at the hearing or for any other reason, the Court may, in its discretion grant a new hearing.
- b. *Recusal.* A Jurist shall comply with the Code provisions related to recusal of jurists and a jurist shall also recuse himself or herself when, in the Jurist's discretion, in good conscience, the jurist determines that he or she should not hear a case for any other reason. To properly carry out the duty to determine whether to recuse himself or herself, a jurist shall remain informed about the jurists' personal and fiduciary financial interests and shall make reasonable effort to remain informed about the financial interests of the jurist's spouse or partner and minor children.
- c. *Suggestions for recusal.* A party to an action may suggest that a jurist should be recused. A paper denominated a motion to recuse shall be deemed a suggestion for recusal. A suggestion for recusal shall be supported by affidavit setting forth the facts and grounds for the suggestion, and the suggestion must be accompanied by a certificate of the counsel of record if any, or the party or its representative, if not represented by counsel, that such affidavit and application are made in good faith. The jurist shall proceed no further in the case until the jurist determines whether to follow the suggestion, except that the jurist shall have discretionary

authority to set the suggestion for further briefing or hearing or to continue any hearings as needed. Where the suggestion is made on appeal, the jurist shall have discretion to refer the matter to the panel for decision. Where the suggestion is made at the Trial Court, the jurist may refer the matter to an appointed judge for that judge to rule on the suggestion. A suggestion for recusal shall be filed as soon as practicable after the case has been assigned or grounds for the suggestion are known.

RULE G - 7. WAIVER OF COURT FEES AND SERVICE FEES

- a. *Filing Fees.* Where a natural person shows the Court that he or she is indigent, and the party requests waiver of a filing fee, the Court shall waive the fee. The Court shall have discretion to condition such waiver upon the performance of up to five hours of community service for the Tribe.
- b. *Fees for Service of Process.* Where a natural person shows the Court that he or she is indigent and that these rules require him or her to serve process on another party, and the party requests that the Court appoint the Tribal Police to serve the process, the Court shall order such service at no cost. The Court may condition the waiver on the performance of up to two hours of community service to the Tribe.
- c. *Indigent defined.* A natural person is indigent when, including money received from a tribe for services rendered, but excluding any other money received from any tribe and excluding accounts which solely hold funds (other than compensation for services rendered) which were received from any Tribe, the person shows the following three elements:
 - i. That the person's household's income is below the federal poverty line for a household of that size;
 - ii. That the person has less than \$5,000 in liquid assets, including funds in joint or individual bank or savings accounts; and
 - iii. That the person owns, either by individual or joint ownership, assets which are worth less than \$50,000.

RULE G - 8. EX PARTE COMMUNICATIONS

Except as explicitly authorized, *ex parte* communications with jurists of the Sac and Fox Tribe of the Mississippi in Iowa Court are prohibited.

RULE G - 9. HARMLESS ERROR

No error in either the admission or the exclusion of evidence, and no error or defect in any paper, process, ruling or order or in anything done or omitted by the Court or by any of the parties, is ground for granting a new hearing or otherwise disturbing a judgment or order, or striking a paper or process, unless refusal to take such action appears to the Court inconsistent

with substantial justice. The Court at every stage of the proceeding shall disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

RULE G - 10. CITATION

These Rules shall be known as the Sac and Fox Tribe of the Mississippi Tribal Court Rules and may be abbreviated S.F.R.

RULE G - 11. AMENDMENT

Any Court rule may be amended by a majority of the appointed judiciary of the Sac and Fox Tribe of the Mississippi in Iowa Tribal Court and Court of Appeals as necessary to ensure fundamental fairness and substantial justice.

SAC AND FOX TRIBE OF THE MISSISSIPPI IN IOWA TRIBAL COURT RULES

RULES FOR SMALL CLAIMS

RULE S - 1. SCOPE AND CONSTRUCTION OF RULES

- a. *Scope.* Except when different rules prescribed in tribal law requires otherwise, these rules shall govern the procedure for:
 - i. an action filed by the Tribe seeking civil fines.
 - ii. an action seeking only monetary judgment in the amount of \$5,000 or less (including recognition of a foreign judgment of \$5000 or less), except that such action may be heard under the rules of civil procedure where the complaint states substantially to the effect that "Plaintiff(s) acknowledge(s) that this matter may be heard under the Rules for Small Claims, and Plaintiff(s) demand(s) that this matter not be heard under the Rules for Small Claims";
 - iii. Any other action, whether initiated under these rules or under the Rules of Civil Procedure, where all parties thereto request that these rules apply.
- b. *Construction.* In construing these rules to secure a just, speedy, and inexpensive determination of every action and in fashioning a procedure when these rules do not provide a mode of proceeding, the Court shall take into account the limited financial interests which are at stake.

RULE S - 2. COMMENCEMENT OF ACTION

Any small claims action is commenced by filing a Statement of Small Claim with the Court and paying the filing fee of \$25.00, provided that the Tribe shall not be required to pay a filing fee.

RULE S - 3. NOTICE OF TRIAL AND SERVICE

- a. *Issuance; date for trial.* Upon commencement of the action, the clerk shall provide, by hand delivery or U.S. mail, each plaintiff with written Notice of Trial, which shall contain the case caption and shall state the time, date and location of the trial. The trial date shall be not less than 10 and not more than 60 days from the date of filing, unless continued for good cause on motion of the Court or any party.

- b. *Notice of Consequence of Failure to Appear.* The Notice of Trial shall prominently state that failure of plaintiff to attend trial shall result in dismissal and failure of defendant to attend trial shall result in entry of judgment by default.
- c. *Personal Service and Service by Mail.* Plaintiff shall have responsibility to serve Notice of Trial and the Statement of Small Claim on all defendants. Services shall be made by a person authorized to serve process under the laws of the Tribe, or by registered or certified mail with return receipt requested, to be delivered to addressee only (restricted delivery). When service is not made by the earlier of seven days before trial or ten days after issuance of Notice of Trial, the Notice shall be returned to the court for reissue.
- d. *Service by Publication.* Service by publication may be made upon order of the Court for good cause shown. Service by publication shall consist of publishing the contents of the Notice of Trial in a local newspaper of general circulation at least once per week for three weeks and by leaving an extra copy of the Notice of Small Claim and Notice of Trial with the Court for the party.

RULE S - 4. ANSWER; COUNTER-CLAIM; CROSS CLAIM

- a. *Answer.* A defendant may, but need not, enter a written answer. If a written answer is entered, it shall be deemed a general denial unless it provides otherwise.
- b. *Counterclaim and Cross-Claims.* If the defendant asserts a counterclaim or cross-claim, a formal and concise plea shall be filed. A counterclaim or cross-claim may be in the form of a Statement of Small Claim. A counterclaim or cross-claim shall be filed by the earlier of the time of trial or fourteen days after service of the Notice of Small Claim, provided that service on or near the date of trial may provide basis for continuance of trial.
- c. *Counterclaims and Cross-Claims other than for monetary relief of \$5,000 or less.* At any time when there is a counterclaim or cross-claim pending which seeks relief other than monetary judgment in the amount of \$5,000 or less, the case shall be heard under the Rules of Civil Procedure unless all parties consent to trial under the Rules for Small Claims.
- d. *Filing Fee for Counterclaims or Cross-Claims.* The filing fee for filing one or more counterclaims or cross-claims shall be \$25.00, except that if the filing of counterclaims or cross-claims results in the matter being heard under the rules of civil procedure, the filing fee shall be \$50.00.

RULE S - 5. DISCOVERY

Discovery is permitted only in exceptional cases and only upon order of the Court.

RULE S - 6. MOTIONS

- a. *Pre-trial motions.* Upon receipt five or more days before trial of a motion for discovery, motion to continue trial, motion to dismiss based upon sovereign or official immunity, motion for service by publication, or suggestion that the judge recuse himself or herself, the Court shall rule on the motion or suggestion prior to the day set for trial.
- b. *Motions Heard at Trial.* Any other motion shall be heard on the day set for trial unless otherwise ordered by the Court.

RULE S - 7. JUDGE TRIAL

- a. *Jury Trial Prohibited.* Jury trials are not permitted in small claims actions.
- b. *Consequence of Failure to Appear.* Where a matter is called for trial and a Plaintiff is not present, that Plaintiff's claims shall be dismissed. The Court shall have discretion to determine whether dismissal is with or without prejudice. If Plaintiff is present but a defendant is not present, Plaintiff shall be required to prove that the defendant was served with Notice of Trial. If such proof is provided, the Court shall enter judgment against the absent defendant in the amount stated in the Notice of Small Claims. If proof of service is insufficient, the Court shall have discretion to reset the matter for trial or dismiss without prejudice.
- c. *Admissibility of Evidence.* Evidence is admissible if it will assist the trier of facts to discover and determine the truth or to determine the relief appropriate to repair relationships, achieve substantial justice, or restore balance to the community in accordance with the customs and traditions of the Tribe.
- d. *Proof of Official Documents.* Official documents of the Tribe or a copy thereof shall be admitted into evidence if they are relevant and if an official having custody or official knowledge thereof certifies under penalty of perjury, whether in Court or by affidavit, that the document or copy thereof is a true and correct representation of what it purports to be.
- e. *Judgment.* The Court need not issue written findings of fact or conclusions of law, but must execute its judgment in writing. Judgment may not exceed \$5,000 plus filing and service fees if applicable.

RULE S - 8. POST-TRIAL MOTIONS AND HEARINGS

If the judgment is not satisfied within ten days of entry, the Court may hear any motion for collection remedies to the extent permitted by the Tribal Code. The Court may not hear any other post-trial motions.

RULE S - 9. APPEAL

Small Claims actions may be appealed under the rules which apply to all other civil actions.

SAC AND FOX TRIBE OF THE MISSISSIPPI IN IOWA COURT RULES

RULES OF CIVIL PROCEDURES

RULE C - 1. ONE FORM OF ACTION

There shall be one form of action under the Rules of Civil Procedure, to be known as a "civil action".

RULE C - 2. COMMENCEMENT OF ACTION

A civil action is commenced by filing a petition or complaint with the Trial Court and payment of the filing fee of \$50.00. No filing fee shall be required in an action commenced by the Tribe. The Court has the discretion to waive the filing fee in any civil action filed.

RULE C - 3. SUMMONS AND SERVICE OF THE SUMMONS AND PETITION OR COMPLAINT

- a. *Summons: issuance.* Upon the commencement of an action, the clerk shall forthwith issue the number of summonses which are reasonably requested by a petitioner.
- b. *Summons: form.* The summons shall be directed to the defendant(s), state the name and address of the defendant's counsel, if any, and otherwise the defendant's address, and the time which within these rules and the Sac & Fox Tribe of the Mississippi in Iowa Code defendant must appear and defend, and shall prominently state that in case of defendant's failure to appear and defend, judgment by default may be rendered against defendant(s) for the relief demanded in the petition or complaint.

RULE C - 4. SERVICE OF A SUMMONS, PETITION OR COMPLAINT, SUBPOENA, OR OTHER PROCESS

- a. *Process Defined.* Process includes any summons or subpoena, or unamended petition or complaint, and includes those amended petition or complaints as provided for in Rule C-10.
- b. *Waiver of Service of Process.* A plaintiff may request that any individual, corporation or association waive service of the summons and petition or complaint. Such request shall be in writing, shall inform defendant of the consequences of failure to comply with the request, and shall provide defendant with a pleading which defendant may sign and return to effectuate waiver. A defendant who receives such request has a duty to avoid unnecessary costs of service of process. A defendant's failure, without good cause, to comply with that

duty shall be deemed relevant in any subsequent discretionary decision in the same case to extend time or continue any hearing.

- c. *Mode of Service of Process.* Except as otherwise provided for in the Sac and Fox Tribe of the Mississippi in Iowa Code, service of the process shall consist of delivering to the party served a copy of the process.
- i. The return of service shall be endorsed with the name of the person serving and the date, time, and place of service and shall be filed with the Clerk.
 - ii. Service may be made on a party by delivering the required papers to the party or upon some person of suitable age and discretion over 16 years old at the party's home or principal place of business, or on an officer, managing agent or employee, or partner of a non-individual party.
 - iii. Service by publication may be made upon order of the Court for good cause shown by publishing the contents of the summons in a local newspaper of general circulation at least once per week for three weeks and by leaving an extra copy of the petition or complaint or paper with the Court for the party.
 - iv. Service may be made by any person authorized to service under Tribal Code Title 5, Article III, Chapter 4.
 - v. Service upon a person otherwise subject to the jurisdiction of the Sac and Fox Tribe of the Mississippi in Iowa Tribal Court may be made anywhere in the United States.

RULE C - 5. PLEADING

- a. *Pleadings permitted.* There shall be a petition or complaint and an answer or petition and response (including such pleadings in a third-party proceeding when a third-party claim is asserted); a reply to a counterclaim denominated as such; and an answer to a cross-claim if the answer contains a cross claim. No other pleading may be filed unless the Court grants additional leave to plead in the interest of narrowing and defining issues or as justice may require.
- b. *Petition or Complaint.* A pleading which sets forth a claim for affirmative relief shall be known as a petition or complaint and shall contain:
 - i. A short, plain statement of the grounds upon which the Court's jurisdiction depends, unless the Court already has jurisdiction over the matter;

- ii. A short, plain statement of the claim showing that the pleader is entitled to relief; and
 - iii. A demand for judgment for the relief to which the pleader considers herself/himself entitled. Such claim for relief can be in the alternative or for several types of relief.
- c. *Answer or response.* A pleading which provides a response to the petition shall be known as an answer or response. The answer or response shall state in plain, concise terms the grounds upon which she/he based her/his defense to claims pleaded against her/him, and shall admit or deny the claims and statements upon which the adverse party relies. If she/he is without information or knowledge regarding a statement or claims, she/he shall so state and such shall be deemed to be a denial. Denials shall fairly meet the substance of the claims or statements denied and may be made as to specified parts but not all of a claim, statement, or averment. A general denial shall not be made unless the party could in good faith deny each and every claim covered thereby. A claim to which a responsive pleading is required, except for amount of damages, shall be deemed admitted unless denied; if no responsive pleading is allowed the claims of the adverse party shall be deemed denied.

RULE C - 6. GENERAL RULES OF PLEADING

- a. *Statement of Claims and Defenses.* Claims and defenses shall be simply, concisely, and directly stated, but may be in alternative or hypothetical form, on one or several counts or defenses, need not be consistent with one another, and may be based on legal or equitable grounds or both. Matters constituting an affirmative defense or avoidance shall be affirmatively set forth. Claims or defenses founded upon separate transactions or occurrences should be set forth in separate counts or defenses. Paragraphs shall be separately numbered and each shall be limited, as nearly as possible, to a single circumstance.
- b. *Adoption by reference.* Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of a written instrument which is an exhibit to a pleading is a part thereof for all purposes.
- c. *Construction of Pleadings.* All pleadings shall be construed so as to do substantial justice. When a party has mistakenly designated a defense as a counterclaim or vice versa, the Court may treat the pleadings as if it had been properly designated if justice so requires.

RULE C - 7. ANSWERS AND OBJECTIONS

- a. *Answers.* A defendant or other party against whom a claim has been made for affirmative relief shall have twenty days from the date of service upon her/him to answer or respond to the claim.
- b. *Objections to Petition or Complaint.* Every defense, in law or fact, to a claim for relief shall be asserted in a responsive pleading thereto if one is required except that the following defenses or requests for relief may at the option of the pleader be made by motion:
 - i. Lack of jurisdiction over the subject matter;
 - ii. Lack of jurisdiction over the person;
 - iii. Insufficiency of process;
 - iv. Insufficiency of service of process;
 - v. Failure to join a party pursuant to Rule C-11(c);
 - vi. Failure to state a claim upon which relief may be granted, further provided that if in hearing such motion, matters outside the pleading are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule C-14(d), and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule C-14(d)(iv);
 - vii. requesting a more definite statement; or
 - viii. requesting that immaterial, impertinent, or scandalous matter be stricken from a pleading.
- c. *Same; combination of objections.* A party shall be permitted to file only one motion to each pleading in which the movant states objections listed in subsection (b)(i-viii) prior to answering the pleading, and the party may combine as many of the objections as warranted into the motion. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion.
- d. *Same; effect of failure to move or plead.* A defense of lack of jurisdiction over the person, insufficiency of process, or insufficiency of service of process is waived if the party does not include that defense in the earlier filing of a responsive pleading or motion to dismiss.
- e. *Motion for Judgment on the Pleading.* After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the

pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule C-14(d), and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule C-14(e)(iii).

- f. *Preliminary Hearings.* Defenses and requests for relief stated in this rule, whether made in a pleading or by motion, shall be heard and determined before trial unless the Court for good cause orders that the hearing and determination be deferred until trial.

RULE C - 8. COUNTERCLAIM OR CROSS-CLAIM

- a. *Compulsory Counterclaims.* A pleading shall state as a counterclaim any claim which, at the time of serving the pleading the pleader has against any opposing party if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties over whom the court cannot acquire jurisdiction, except that such a claim need not be so stated if at the time the action was commenced the claim was the subject of another pending action.
- b. *Permissive Counterclaims.* A pleading may state as a counterclaim any claim against an opposing party not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim.
- c. *Cross-claim.* A party against whom a claim is made may assert any claim she/he has against a co-party and have such claim resolved at trial.
- d. *Third-Party Claims.* A party against whom a claim is made may complain against a third party who is or may be liable for payment or performance of the claim of the opposing party and have such petition or complaint resolved at trial.

RULE C - 9. JOINDER OF CLAIMS AND REMEDIES

A party asserting a claim to relief as an original claim, counterclaim, cross-claim or third-party claim may join, either as independent or alternative claims, as many claims as the party has against any opposing party.

RULE C - 10. AMENDMENT AND SUPPLEMENTATION OF PLEADINGS

- a. *Amendments Prior to Trial.* A party shall have the right to amend a pleading once prior to pre-trial. Other amendments shall be allowed only upon motion and order of the Court, provided that leave shall be freely given when justice so requires.

- b. *Supplementation Prior to Trial.* Upon motion of a party, the Court may permit a party to supplement a pleading to set forth transactions, occurrences, claims, counterclaims, cross-claims, and third-party claims which happened, matured, or were acquired since the date of the pleading sought to be supplemented.
- c. *Amendment or Supplementation to Conform to Evidence.* When issues or evidence not raised in the pleadings are heard at trial, the judgment may conform to such issues or evidence without the necessity of amendment or supplementation of the pleadings.

RULE C - 11. PARTIES

- a. *Real Party in Interest.* Every action shall be prosecuted in the name of the real party in interest, except a personal representative or other person in a fiduciary position can sue in her/his own name without joining the party for whose benefit the action is maintained.
- b. *Infants or Incompetent Persons.* When an infant, or an insane or incompetent person who has not had a general guardian appointed is a party, the Court shall appoint a guardian ad litem to represent such person in the suit or action. A guardian ad litem is considered an officer of the Court to represent the interests of the infant, insane or incompetent person, in the litigation.
- c. *Joinder of Persons Needed for Just Adjudication.* The rule for joinder of persons needed for just adjudication shall be as follows:
 - i. *Persons to Be Joined If Feasible.* A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if;
 - (1) the person's absence complete relief cannot be accorded among those already parties, or
 - (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may
 - (a) as a practical matter impair or impede the person's ability to protect that interest or
 - (b) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest.

If the person has not been so joined, the court shall order that the person be made a party. If the person should join as a plaintiff but refuses to do so, the person may be made a defendant, or, in a proper case, an involuntary plaintiff. If the joined party objects to venue and joinder of that party would render the venue of the action improper, that party shall be dismissed from the action.

- ii. **Determination by Court Whenever Joinder Not Feasible.** If a person as described in subdivision (c)(i)(1)-(2) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to the person or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.
 - iii. **Pleading Reasons for Nonjoinder.** A pleading asserting a claim for relief shall state the names, if known to the pleader, of any persons as described in subdivision (c)(i)(1)-(2) hereof who are not joined, and the reasons why they are not joined.
 - iv. **Exception of Class Actions.** This rule is subject to the provisions of Rule C-11(g).
- d. ***Permissive Joinder of Parties.*** The rule for permissive joinder of parties shall be as follows:
 - i. **Permissive Joinder.** All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action. All persons (and any vessel, cargo or other property subject to admiralty process in rem) may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.
 - ii. **Separate Trials.** The court may make such orders as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of a party against whom the party asserts no claim and who asserts no claim against the party, and may order separate trials or make other orders to prevent delay or prejudice.
- e. ***Misjoinder and Non-Joinder of Parties.*** Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such

terms as are just. Any claim against a party may be severed and proceeded with separately.

- f. *Interpleader.* Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability. It is not ground for objection to the joinder that the claims of the several claimants or the titles on which their claims depend do not have a common origin or are not identical but are adverse to and independent of one another, or that the plaintiff avers that the plaintiff is not liable in whole or in part to any or all of the claimants. A defendant exposed to similar liability may obtain such interpleader by way of cross-claim or counterclaim. The provisions of this rule supplement and do not in any way limit the joinder of parties permitted in Rule C-11(d).
- g. *Class Action.* The rule for Class Action suits shall be as follows:
- i. Prerequisites to a Class Action. One or more members of a class may sue or be sued as representative parties on behalf of all only if
 - (1) the class is so numerous that joinder of all members is impracticable,
 - (2) there are questions of law or fact common to the class,
 - (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and
 - (4) the representative parties will fairly and adequately protect the interests of the class.
 - ii. Class Actions Maintainable. An action may be maintained as a class action if the prerequisites of subdivision (i) are satisfied, and in addition:
 - (1) the prosecution of separate actions by or against individual members of the class would create a risk of;
 - (a) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, or
 - (b) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or
 - (2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or
 - (3) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other

available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include:

- (a) the interest of members of the class in individually controlling the prosecution or defense of separate actions;
- (b) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class;
- (c) the desirability or undesirability of concentrating the litigation of the claims in the particular forum;
- (d) the difficulties likely to be encountered in the management of a class action.

iii. Determining by Order Whether to Certify a Class Action; Appointing Class Counsel; Notice and Membership in Class; Judgment; Multiple Classes and Subclasses.

- (1)
 - (a) When a person sues or is sued as a representative of a class, the court must, at an early practicable time, determine by order whether to certify the action as a class action.
 - (b) An order certifying a class action must define the class and the class claims, issues, or defenses, and must appoint class counsel under Rule C-11(g)(vii).
 - (c) An order under Rule C-11 (g)(iii)(1) may be altered or amended before final judgment.
- (2)
 - (a) For any class certified under Rule C-11(g)(ii)(1) or (2), the court may direct appropriate notice to the class.
 - (b) For any class certified under Rule C-11(g)(ii)(3), the court must direct to class members the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice must concisely and clearly state in plain, easily understood language:
 - the nature of the action,
 - the definition of the class certified,
 - the class claims, issues, or defenses,
 - that a class member may enter an appearance through counsel if the member so desires,
 - that the court will exclude from the class any member who requests exclusion, stating when and how members may elect to be excluded, and
 - the binding effect of a class judgment on class members under Rule C-11(g)(iii)(3).
- (3) The judgment in an action maintained as a class action under subdivision (ii)(1) or (ii)(2), whether or not favorable to the class, shall include and describe those whom the court finds to be members of the class. The judgment in an action maintained as a class action under subdivision (ii)(3), whether or not favorable to

the class, shall include and specify or describe those to whom the notice provided in subdivision (iii)(2) was directed, and who have not requested exclusion, and whom the court finds to be members of the class.

- (4) When appropriate
 - (a) an action may be brought or maintained as a class action with respect to particular issues, or
 - (b) a class may be divided into subclasses and each subclass treated as a class, and the provisions of this rule shall then be construed and applied accordingly.

iv. Orders in Conduct of Actions. In the conduct of actions to which this rule applies, the court may make appropriate orders:

- (1) determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument;
- (2) requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in such manner as the court may direct to some or all of the members of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to come into the action;
- (3) imposing conditions on the representative parties or on intervenors;
- (4) requiring that the pleadings be amended to eliminate therefrom allegations as to representation of absent persons, and that the action proceed accordingly;
- (5) dealing with similar procedural matters. The orders may be combined with an order under Rule C-17, and may be altered or amended as may be desirable from time to time.

v. Settlement, Voluntary Dismissal, or Compromise.

- (1)
 - (a) The court must approve any settlement, voluntary dismissal, or compromise of the claims, issues, or defenses of a certified class.
 - (b) The court must direct notice in a reasonable manner to all class members who would be bound by a proposed settlement, voluntary dismissal, or compromise.
 - (c) The court may approve a settlement, voluntary dismissal, or compromise that would bind class members only after a hearing and on finding that the settlement, voluntary dismissal, or compromise is fair, reasonable, and adequate.
- (2) The parties seeking approval of a settlement, voluntary dismissal, or compromise under Rule C-11(g)(v)(i) must file a statement identifying any agreement made in connection with the proposed

- settlement, voluntary dismissal, or compromise.
- (3) In an action previously certified as a class action under Rule C-11(g)(ii)(3), the court may refuse to approve a settlement unless it affords a new opportunity to request exclusion to individual class members who had an earlier opportunity to request exclusion but did not do so.
 - (4)
 - (a) Any class member may object to a proposed settlement, voluntary dismissal, or compromise that requires court approval under Rule C-11(g)(v)(1)(a).
 - (b) An objection made under Rule C-11(g)(v)(4)(a) may be withdrawn only with the court's approval.
- vi. Appeals. A court of appeals may in its discretion permit an appeal from an order of a district court granting or denying class action certification under this rule if application is made to it within ten days after entry of the order. An appeal does not stay proceedings in the district court unless the district judge or the court of appeals so orders.
- vii. Class Counsel.
- (1) Appointing Class Counsel.
 - (a) Unless a statute provides otherwise, a court that certifies a class must appoint class counsel.
 - (b) An attorney appointed to serve as class counsel must fairly and adequately represent the interests of the class.
 - (c) In appointing class counsel, the court
 - (i) must consider:
 - the work counsel has done in identifying or investigating potential claims in the action,
 - counsel's experience in handling class actions, other complex litigation, and claims of the type asserted in the action,
 - counsel's knowledge of the applicable law, and
 - the resources counsel will commit to representing the class;
 - (ii) may consider any other matter pertinent to counsel's ability to fairly and adequately represent the interests of the class;
 - (iii) may direct potential class counsel to provide information on any subject pertinent to the appointment and to propose terms for attorney fees and nontaxable costs; and
 - (iv) may make further orders in connection with the appointment.
 - (2) Appointment Procedure.
 - (a) The court may designate interim counsel to act on behalf of the putative class before determining whether to certify the

- action as a class action.
- (b) When there is one applicant for appointment as class counsel, the court may appoint that applicant only if the applicant is adequate under Rule C-11(g)(vii)(1)(b) and (c). If more than one adequate applicant seeks appointment as class counsel, the court must appoint the applicant best able to represent the interests of the class.
 - (c) The order appointing class counsel may include provisions about the award of attorney fees or nontaxable costs under Rule C-11(g)(viii).
- viii. **Attorney Fees Award.** In an action certified as a class action, the court may award reasonable attorney fees and nontaxable costs authorized by law or by agreement of the parties as follows:
- (1) **Motion for Award of Attorney Fees.** A claim for an award of attorney fees and nontaxable costs must be made by motion under Rule C-28(d) and (e), subject to the provisions of this subdivision, at a time set by the court. Notice of the motion must be served on all parties and, for motions by class counsel, directed to class members in a reasonable manner.
 - (2) **Objections to Motion.** A class member, or a party from whom payment is sought, may object to the motion.
 - (3) **Hearing and Findings.** The court may hold a hearing and must find the facts and state its conclusions of law on the motion.
 - (4) **Reference to Special Master or Magistrate Judge.** The court may refer issues related to the amount of the award to a special master or magistrate judge.
- ix. **Derivative Actions by Shareholders.** In a derivative action brought by one or more shareholders or members to enforce a right of a corporation or of an unincorporated association, the corporation or association having failed to enforce a right which may properly be asserted by it, the complaint shall be verified and shall allege
- (1) that the plaintiff was a shareholder or member at the time of the transaction of which the plaintiff complains or that the plaintiff's share or membership thereafter devolved on the plaintiff by operation of law, and
 - (2) that the action is not a collusive one to confer jurisdiction on a court of the United States which it would not otherwise have. The complaint shall also allege with particularity the efforts, if any, made by the plaintiff to obtain the action the plaintiff desires from the directors or comparable authority and, if necessary, from the shareholders or members, and the reasons for the plaintiff's failure to obtain the action or for not making the effort. The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of the shareholders or members similarly situated in enforcing the right of the

corporation or association. The action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to shareholders or members in such manner as the court directs.

- x. **Actions Relating to Unincorporated Associations.** An action brought by or against the members of an unincorporated association as a class by naming certain members as representative parties may be maintained only if it appears that the representative parties will fairly and adequately protect the interests of the association and its members. In the conduct of the action the court may make appropriate orders corresponding with those described in Rule C-11(g)(iv), and the procedure for dismissal or compromise of the action shall correspond with that provided in Rule C-11(g)(v).

RULE C - 12. INTERVENTION

- a. ***Intervention of Right.*** Upon timely application anyone shall be permitted to intervene when the applicant shows that: (1) a statute or common law of the Tribe confers an unconditional right to intervene, or (2) it has a colorable claim of interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest.
- b. ***Permissive Intervention.*** Upon timely application anyone may be permitted to intervene when the applicant shows that: (1) a statute or common law of the Tribe confers a conditional right to intervene, or (2) applicant's claim or defense and the main action have a question of law or fact in common. The Court may also permit an applicant to intervene when the applicant had an unconditional right to intervene but was denied intervention of right because of applicant's failure to timely seek intervention.

RULE C - 13. SUBSTITUTION OF PARTIES

If a party dies or becomes incompetent or transfers her/his interest or separates from some official capacity, a substitute party may be joined or substituted as justice requires.

RULE C - 14. MOTIONS PRACTICE

- a. ***Motions and other Papers.*** An application to the Court for an order shall be by motion and shall be in writing, unless made orally during a hearing or trial, and shall set forth the relief or order sought and the grounds therefor stated with particularity. Submission of a motion shall be deemed a request that the Court set the motion for hearing and rule on the motion, and no separate note for motion is required.
- b. ***Scope and Application.*** This rule shall govern all civil motions. Motions are

either dispositive or non-dispositive, and are defined as follows:

- i. Dispositive motions are motions which seek to dispose of all or part of the claims or parties, except motions for default judgment. They include motions to dismiss a party or claim, motions for summary judgment, and motions under subsection and of this Rule.
 - ii. Non-Dispositive motions are all other motions, including but not limited to discovery, third party practice, temporary relief, intervention or amendment of pleadings.
- c. *Hearing Date; Notice to Parties.* Upon the filing of a motion, the Clerk shall set the matter for hearing and send notice to all parties who have appeared at the address the party provided for service of notice.
- d. *Dispositive Motions*
- i. No motion shall be heard until the moving party serves a copy of the following documents on opposing counsel and files the original with the Clerk of Court as ordered by the Court:
 - (1) The motion;
 - (2) Any affidavits and exhibits to be submitted in conjunction with the motion; and
 - (3) Memorandum of law.
 - ii. The party responding to the motion shall serve a copy of the following documents on opposing counsel and shall file the originals with the Clerk of Court as ordered by the Court:
 - (1) Memorandum of law; and
 - (2) Supplementary affidavits and exhibits.
 - iii. *Reply Memoranda.* The moving party may submit a reply memorandum, limited to new legal or factual matters raised by an opposing party's response to a motion, by serving a copy on opposing counsel and filing the original with the Clerk of Court as ordered by the Court.
 - iv. *Additional Requirement for Summary Judgment Motions.* For summary judgment motions, the memorandum of law shall include:
 - (1) A statement by the moving party of the issues involved in the motion for summary judgment;
 - (2) A statement identifying all documents (such as depositions or excerpts thereof, pleadings, exhibits, admissions, interrogatory

answers, and affidavits) which comprise the record on which the motion is made. Opposing parties shall identify in their responding Memorandum of Law any additional documents on which they rely.

- (3) A recital by the moving party, in short numbered paragraphs, of the material facts as to which there is no genuine dispute, with a specific citation to that part of the record supporting each fact, such as deposition page and line or page and paragraph of an exhibit. A party opposing the motion shall admit or deny that each numbered factual assertions contains undisputed facts, and may make additional statements, in short, numbered paragraphs, of undisputed material facts and material factual disputes. Where the party opposed to the motion makes such additional statements, the moving party shall admit or deny in like manner. Such recitals are excluded from the page limitations of this rule; and
- (4) The party's argument and authorities.
- (5) These additional requirements also apply to a motion under Rule C-14(b)(i) if factually based.

e. *Non-Dispositive Motions*

- i. No motion shall be heard until the moving party serves a copy of the following documents on the other party or parties and files the original with the Clerk of Court at least 14 days prior to the hearing:
 - (1) The motion;
 - (2) Any affidavits and exhibits to be submitted in conjunction with the motion; and
 - (3) Any memorandum of law the party intends to submit; and
- ii. The party responding to the motion shall serve a copy of the following documents on the moving party and other interested parties and shall file the original with the Clerk of Court at least 7 days prior to the hearing:
 - (1) Any memorandum of law the party intends to submit; and
 - (2) Any relevant exhibits and affidavits.
- iii. *Reply Memoranda.* The moving party may submit a reply memorandum, limited to new legal or factual matters raised by an opposing party's response to a motion, by serving a copy on opposing counsel and filing the original with the Clerk of Court as ordered by the Court.

- f. *Motions on Which No Hearing is Scheduled.* If a motion is filed and no hearing date thereon is scheduled, the non-moving party(ies) have fifteen days to respond to the motion, and the moving party shall have seven days to file any reply. These time limits shall apply to all motions on which no hearing is scheduled unless

otherwise agreed by the parties or ordered by the Court. The page limits set forth in subsection (g) shall apply to this subsection.

- g. *Page Limits.* No memorandum of law submitted in connection with either a dispositive or non-dispositive motion shall exceed thirty pages, exclusive of the recital of facts required by subsection (d)(iv)(3), except with permission of the Court. For motions involving discovery requests, the moving party's memorandum shall set forth only the particular discovery requests and the response or objection thereto which are the subject of the motion, and a concise recitation of why the response or objection is improper. If a reply memorandum of law is filed, the cumulative total of the original memorandum and the reply memorandum shall not exceed thirty-five pages, except with the permission of the Court.
- h. *Failure to Comply.* If the moving papers are not properly served and filed, the hearing may be canceled by the Court. If responsive papers are not properly served and filed in a non-dispositive motion, the Court may deem the motion unopposed and may grant the relief requested without a hearing. For a dispositive motion, the Court, in its discretion, may refuse to permit oral argument by the party not filing the required documents, may allow reasonable counsel's fees, or may take other appropriate action.
- i. *Witnesses.* No testimony will be taken at motion hearings except under unusual circumstances. Any party seeking to present witnesses at a motion hearing shall obtain prior consent of the Court and shall notify the adverse party in the motion papers of the names and addresses of the witnesses and summary of their testimony which that party intends to call at the motion.
- j. *Telephone Hearings.* When a motion is authorized by the Court to be heard by telephone conference call, the moving party shall be responsible either to initiate the conference call or to comply with the Court's instructions on initiation of the conference call. If necessary, adequate provision shall be made by the Court for a record of the telephone hearing.
- k. *Settlement Efforts.* No motion will be heard unless the parties have conferred, either in person, or by telephone, or in writing in an attempt to resolve their differences prior to the hearing. The moving party shall initiate the conference. The moving party shall certify to the Court, before the time of the hearing, compliance with this rule or any reasons for inability to comply, including lack of availability or cooperation of opposing counsel. Whenever any pending motion is settled, the moving party shall promptly advise the Court.
- l. *Time limits for Injunctions and Temporary Restraining Orders.* This Rule shall not apply to motions or applications for injunctions or temporary restraining orders. Briefing and hearing schedules for motions or applications for injunctions

or temporary restraining orders shall be set by the Court on a case-by-case basis.

RULE C - 15. DISCOVERY

- a. *Persons before whom Depositions may be Taken.* Depositions may be taken before any person who is authorized to administer oaths under the laws of the Tribe or the laws of any other Tribe or any State, except that no deposition shall be taken before a person who is a relative or employee or counsel of any of the parties or is a relative or employee of such counsel or is financially interested in the action.
- b. *Stipulations Regarding Discovery Procedure.* The rule for Stipulations Regarding Discovery Procedure shall be the same as those found in Federal Rule of Civil Procedure 29.
- c. *Depositions Before Action or Pending Appeal.* The rule for Deposition Before Action or Pending Appeal shall be the same as those found in Federal Rule of Civil Procedure 27, except that references to the United States shall be recast as references to the Sac and Fox Tribe of the Mississippi in Iowa.
- d. *Deposition Upon Oral Examination.* The rule for Deposition Upon Oral Examination shall be the same as those found in Federal Rule of Civil Procedure 30.
- e. *Deposition Upon Written Questions.* The rule for Deposition Upon Written Questions shall be the same as those found in Federal Rule of Civil Procedure 31.
- f. *Interrogatories to Parties.* The rule for Interrogatories to Parties shall be the same as those found in Federal Rule of Civil Procedure 33.
- g. *Production of Documents and Things and Entry Upon Land for Inspection and Other Purposes.* The rule for Production of Documents and Things and Entry Upon Land for Inspection and Other Purposes shall be the same as those found in Federal Rule of Civil Procedure 34.
- h. *Physical and Mental Examinations of Persons.* The rule for Physical and Mental Examinations of Persons shall be the same as those found in Federal Rule of Civil Procedure 35.
- i. *Requests for Admissions.* The rule for Requests for Admission shall be the same as those found in Federal Rule of Civil Procedure 36.
- j. *Duty to Provide Complete and Accurate Discovery Responses.* A person responding to discovery (the answerer) and his/her counsel, the party with which the answerer is aligned (if any) and the party's counsel each have a duty to: (1)

provide complete and accurate disclosures and responses to discovery requests, which do not misstate information, mislead, or omit relevant information; and (2) where a reasonable person might interpret a discovery request in more than one way, to provide answers to the most expansive interpretation of the discovery request, or, if such would provide greater information, to all possible interpretations of the discovery request. Each counsel has a duty to advise its client of the aforementioned duties and to obtain written acknowledgment that the advice has been provided and that the duties will be complied with. Where the counsel knows or strongly believes that any duty stated above has not been complied with, the counsel must report the failure or believed failure to the Court, and such reporting shall be required by the Tribe's rules of professional responsibility and shall not be in violation of any rule or law, including rules or laws related to attorney/counsel-client privilege and the duty of confidentiality. A party may obtain discovery of all written acknowledgments executed pursuant to this Rule.

- k. *Duty to Supplement.* (1) An answerer and his/her counsel and the party with which the answerer is aligned (if any) and the party's counsel, are each under a duty to reasonably supplement or correct a discovery disclosure or response where the person or entity learns that a discovery response is in some material respect inaccurate or incomplete. A response is inaccurate or incomplete if the party would no longer provide the identical answer, response, or disclosure if the question or demand were posed anew.
- l. *Scope of Discovery.* Parties may obtain discovery regarding any matter, not privileged, which is relevant to the pending action, whether or not such would be admissible at trial, if such appears reasonably calculated to lead to the discovery of admissible evidence. The work product of a party's counsel is not discoverable.
- m. *Limitations on Discovery; Protective Order.* A party against whom discovery is sought may move the Court for a protective order to prevent undue annoyance, harassment, embarrassment, oppression, or undue burden or expense, and the Court may order that the discovery cease or proceed only upon specified conditions.
- n. *Failure to Provide Discovery; Motion to Compel.* If a party fails to respond or appear for discovery as provided in this rule, the opposing party may move for an order to compel the defaulting party to perform and the Court may award costs to the non-defaulting party. If a party fails to perform after being ordered to do so by the Court, the Court may, upon motion, order that a certain fact, claim, or defense be deemed established or strike part of a claim or defense, or dismiss or render a judgment by default against the non-complying party in an aggravated case.
- o. *Use of Discovery.* Answers to interrogatories and depositions may be used in a motion, hearing or at trial to impeach or contradict the testimony of the person

discovered, or by an adverse party for any purpose as if the witness were present at the motion, hearing or trial. Unless used as evidence, discovery documents need not be filed with the Court.

RULE C - 16. DISMISSAL OF ACTIONS

- a. *On Motion of Plaintiff.* Prior to the responsive pleading of a party against whom a claim has been made or motion to dismiss or for summary judgment of such claim, the party making the claim may file a notice of dismissal and her/his claim shall be deemed dismissed without prejudice. In all other circumstances a party may move the Court to dismiss her/his own claim and the Court shall do so either with or without prejudice as is just and proper given the stage of the proceedings, provided, however, if a cross-claim or counterclaim has been filed against the moving party, the judge shall dismiss the claim only with the consent of the adverse party or only if it appears that the other party can prosecute her/his claim independently without undue additional hardship.
- b. *Other dismissals; effect.* Dismissal other than those moved by plaintiff shall be deemed an adjudication of the merits of the issue dismissed unless the Court shall, for good cause shown, order otherwise.
- c. *Costs on dismissal.* The Court may order a party moving to dismiss her/his own claim to pay the costs of the adverse party if the proceeding has progressed beyond the pleading stage, and may order payment of costs in other circumstances where such is deemed appropriate.

RULE C - 17. PRETRIAL MEETINGS

- a. *Setting Pretrial meeting.* Upon written request of either party or upon the Court's own motion the Court may schedule a pretrial meeting between the parties, and their counsel, if any. Such meetings may be held or requested either before or after the case is scheduled for trial.
- b. *Scope of issues at Pretrial Meeting.* During such meetings the parties and the Judge may consider any matters which will aid in the simplification, clarification, or disposition of the case. The parties and the Judge may develop procedures to be followed at the trial. The Judge may encourage the parties to explore the possibility of settling their dispute and the Judge may participate in settlement discussions to the extent that her/his impartiality at any eventual trial will not be affected.
- c. *Memorandum of Actions Taken at Pretrial Meeting.* The parties shall prepare a written memorandum of each pretrial meeting setting forth the actions taken at the meeting. Copies of this memorandum shall be distributed to the parties.

RULE C - 18. TRIALS

- a. *Trial by Court; exceptions.* Unless otherwise provided by law, all trials shall be judge trials, except that a case may be tried to a jury if the Court, with the consent of all parties, agree to trial by jury.
- b. *Assignment of Trial Judge.* The Chief Judge shall determine which judge shall preside over a case.

RULE C - 19. JURY TRIALS

- a. *Request.* Where jury trials are permitted, and unless otherwise provided for by law, the case will be heard by a judge unless a party to the action files a request for a jury trial, accompanied by payment of a fee of fifty dollars not less than forty days prior to the scheduled date of trial.
- b. *Same; Specification of Issues.* Unless the requesting party specifies otherwise, all factual issues properly triable by a jury shall be decided by the jury at trial. A party requesting a jury trial may specify only those issues she/he wants tried to the jury, and any other party may specify, not less than five days before the date scheduled for trial, any other issues she/he wishes to be so tried. Once any or all issues of a case have been requested for a jury trial, such request may not be withdrawn without the consent of all of the parties.
- c. *Jury at Court's Request.* Where jury trial is permitted by law, the Court may order the trial by a jury of any or all of the factual issues of a case regardless of whether the parties have requested such.
- d. *Advisory Jury.* In all actions not triable of right by a jury the Court upon motion or of its own initiative may try any issue with an advisory jury.

RULE C - 20. CONSOLIDATION; SEPARATE TRIALS

- a. *Consolidation.* The Court may, upon motion of any party or its own motion, order some or all of the issues of separate actions tried together when there is a common issue of fact or law relating the actions or if such will tend to avoid unnecessary cost or delay.
- b. *Separate trials.* The Court may, to avoid prejudice or in furtherance of convenience, order a separate trial of a claim or issue.

RULE C - 21. EVIDENCE

- a. *Admissibility of Evidence.* Evidence is admissible if it will assist the trier of fact to discover and determine the truth or to determine the relief appropriate to repair

relationships, achieve substantial justice, or restore balance to the community in accordance with the customs and traditions of the Tribe.

- b. *Proof of Official Documents.* Official documents of the Tribe or a copy thereof shall be admitted into evidence if they are relevant and if an official having custody or official knowledge thereof certifies under penalty of perjury, whether in Court or by affidavit, that the document or copy thereof is a true and correct representation of what it purports to be.
- c. *Offer of Proof.* In an action tried to a jury, excluded evidence may, upon request, be included in the record for purposes of appeal and excluded oral testimony shall be put into evidence by means of an offer of proof made out of the hearing of the jury. In an action tried only to the Court, the judge may receive such excluded testimony into the record.

RULE C - 22. SUBPOENAS; WITNESSES

- a. *Subpoenas.* Subpoenas for attendance of witnesses or production of documents or things at deposition or trial may be signed by the Clerk of Court or by counsel of record in an action. Subpoenas must be served as process, as provided for in Rule C-4. A person who has been properly served with a subpoena and fails to appear or produce may be deemed in contempt of Court and amenable to civil sanctions.
- b. *Witnesses.* A party may call any person who is competent to testify as a witness and examine any witness so called on any matter relevant to the action. A party may impeach her/his own witness. A witness may be called to testify if the witness is present, even if the witness was not subpoenaed.
- c. *Oath.* Prior to testifying, the witness must subscribe to the following oath or affirmation:

“I, _____ do solemnly swear [or affirm] that the testimony I give will be the truth and will include all necessary, helpful, and relevant facts such that the Court may make a proper, informed, and just decision.”
- d. *Leading questions.* A party may use leading questions against an adverse party or hostile witness, when such appears reasonably necessary to elicit testimony from witnesses of tender years or poor ability to communicate, and in cross-examination which is within the general scope of topics discussed in direct examination.

RULE C - 23. JURORS

- a. *Qualifications.* Any enrolled member of the Sac and Fox Tribe of the Mississippi

in Iowa, between the ages of 18 and 75 who resides on the Sac and Fox Tribe of the Mississippi in Iowa Settlement, shall be eligible to be a juror. Judges and other officers or employees of the Court shall not be eligible to be jurors while thus employed. The Chief Judge may by rule adopt procedures whereby non-Indians may be summoned for jury duty in cases in which one or more non-Indian parties are involved.

- b. *Size of jury; alternate permitted.* The size of the jury shall be determined by tribal statutory law, and the Court may allow one or more additional juror to be chosen as alternate jurors. In the event that an alternate juror is chosen and hears the case, the alternate juror shall be dismissed prior to the jury's deliberation if not needed, and treated like a regular juror if needed.
- c. *Challenges to jurors.* A challenge is an objection made to a potential trial juror. Either party may challenge jurors but where there are several parties on either side, they must join in a challenge before it can be made.
- d. *Peremptory Challenges.* Challenges to jurors are either peremptory or for cause. Each party or side shall be entitled to three peremptory challenges.
- e. *Challenges for Cause.* Challenges for cause shall be made against a potential juror on the grounds that she/he is not entitled or qualified to be a juror, she/he has formed an opinion regarding the case, or if for any other reason it appears likely or reasonably possible that a juror will not be able to render a fair and impartial verdict. The judge may take evidence relative to a challenge for cause and shall in any event render a decision thereon.
- f. *Questioning of Jurors.* The Court may adopt any mode for questioning jurors which permits the parties to make informed peremptory challenges and challenges for cause.
- g. *Inability of juror to perform duties.* If, after the proceedings begin and before a verdict is reached, a juror becomes unable or disqualified to perform her/his duty, an alternate juror shall take her/his place; if there is no alternate juror, the parties may agree to complete the action with the other jurors. If no agreement can be reached, the judge shall discharge the jury and the case shall be tried with a new jury.
- h. *Jury deliberations.* Once the case is submitted to them, the jury shall retire to deliberate in private under the charge of an officer of the Court who will refrain from communicating with them except to inquire whether they have a verdict, and she/he shall prevent others from improperly communicating with the jury. The jury may take with them when deliberating any of the following:
 - i. The Court's instructions;

- ii. Papers or things received in evidence as exhibits;
- iii. Notes taken by the jurors themselves, but not notes taken by non-jurors
- i. *Questions or requests from the jury.* If after the jury retires, there is some question on an instruction or other point of law or disagreement regarding the testimony, the jury may request additional instructions from the Court, such to be given on the record after notice to the parties or their counsel.
- j. *Jury Verdict.* When the number of members required for a verdict agree to a verdict, they shall so inform the Court. This jury shall be conducted into the courtroom and the Clerk shall call the jury roll; the verdict shall be given in writing to the Clerk and then read by the Clerk to the Court; inquiry shall be made by the Court to the jury foreperson as to whether such is their verdict. Either party may have the jury polled individually to determine if such is, in fact, their verdict. If insufficient jurors agree with the verdict, the jury shall be sent out again to reconsider; otherwise, the verdict is complete and the jury shall be dismissed. If the verdict is read or recorded incorrectly by the Clerk or foreperson, the jury shall retire to correct the verdict.

RULE C - 24. SPECIAL VERDICTS AND INTERROGATORIES

The Court may require the jury to return their verdict in the form of specific findings on specified issues or may require the jury to return a general verdict accompanied by answers to questions related to the issues under consideration.

RULE C - 25. INSTRUCTIONS TO THE JURY

- a. *Proposed jury instructions.* At the close of the evidence or at such earlier time as the Court may direct, any party may file written requested instructions for the Court to give to the jury. The Court shall inform the parties or their counsel of the instructions it intends to give and hear argument thereon out of the hearing of the jury.
- b. *General Instructions to the Jury.*
 - i. Any time prior to their verdict when the jurors are allowed to leave the courtroom, the judge shall admonish them not to converse with or listen to any other person on the subject of the trial and further admonish them not to form or express an opinion on the case until the case is submitted to the jury for their decision.
 - ii. The Court shall in all cases instruct the jury that their first task is to select a foreperson, of the elements which each party must prove and the

applicable burden of proof, and of the method for informing the Court that it has reached a verdict or has an inquiry.

- c. *Instructing the jury before final argument.* Final arguments for the parties shall be made after the jury has been instructed. The Court shall not comment on the evidence of the case and, if it should restate any of the evidence, it shall inform the jury that they are the sole triers of the facts.

RULE C - 26. MOTIONS FOR DIRECTED VERDICT AND FOR JUDGMENT NOTWITHSTANDING THE VERDICT

- a. *Motion for Directed Verdict.* A party who moves for a directed verdict at the close of the evidence offered by the opposing side may offer evidence as if no motion had been made in the event that the motion is denied. A motion for directed verdict shall state the grounds therefor and may be granted by the Court without the assent of the jury.
- b. *Judgment Notwithstanding the Verdict.* A party may move for judgment notwithstanding the verdict within ten days after entry of judgment. A motion for a new trial may be made in the alternative. The Court shall enter judgment or make any orders consistent with its decision on the motions. A party may only file one motion for judgment notwithstanding the verdict.

RULE C - 27. FINDINGS BY THE COURT

In cases tried without a jury, and except in cases where a party defaults, fails to appear or otherwise waives such, findings of fact and conclusions of law shall be made by the Court in support of all final judgments. Findings of fact and conclusions of law may be written or may be orally stated on the record. Upon its own motion or the motion of any party within ten days of the entry of judgment, findings may be amended or added to and the judgment may be amended accordingly. Upon receipt of a motion to amend judgment, the non-moving party wishing to file a response shall do so within ten days, but shall not be required to file a response.

RULE C - 28. JUDGMENT; COSTS

- a. *Judgment defined.* A judgment includes any final order from which an appeal is available and no special form of judgment is required.
- b. *Judgment upon multiple claims or involving multiple parties.* When more than one claim for relief is presented in an action, however designated, a final judgment may be entered on less than all of such claims only upon the Court specifically finding that such is justified. Absent such a finding, an order or decision will not terminate the action as to any of the claims until all claims are finally decided, nor will the appeal period commence to run.

- c. *Scope of Permitted Judgment.* Except in the case of a default judgment, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if such relief is not demanded in the pleadings. It may be given for or against one or more of several plaintiffs; and it may, if justice so requires, determine the ultimate rights of the parties on each side as between or among themselves. A judgment by default shall not be different in kind from, or exceed in amount, that specifically prayed for in the demand for judgment.
- d. *Costs.* The Court may allow necessary costs and disbursements to the prevailing party or parties upon the filing of a verified memorandum of her/his costs and necessary disbursements within fourteen days of the entry of judgment and serving a copy of such on the opposing party. If such are not objected to within ten days, they shall be deemed to be a part of and included in the judgment rendered.
- e. *Counsel's fees.* The Court shall not award counsel's fees in a case unless such have been specifically provided for by law, contract, or agreement of the parties to the dispute, or unless it reasonably appears that the case has been prosecuted for purposes of harassment only, or that there was no reasonable expectation of success on the part of the affirmatively claiming party or if the Court determines that such award is appropriate in equity.

RULE C - 29. DEFAULT

- a. *Entry of default.* When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules, her/his default may be entered by the Clerk and judgment by default granted. Once the default is entered no further notice to the defaulting party of any action taken or to be taken need be given.
- b. *Judgment.* Judgment by default may be entered by the Court without a hearing if a party's claim against the opposing party is for a sum of money which is or can by computation be made certain, and if the opposing party has been personally served on the Settlement. Otherwise, judgment by default can be entered only upon receipt of whatever evidence the Court deems necessary to establish the relief which should be provided. No judgment by default shall be entered against the Sac and Fox Tribe of the Mississippi in Iowa unless the plaintiff establishes a claim or right to relief by evidence satisfactory to the Court.
- c. *Setting aside default.* The Court may, for good cause shown, set aside either an entry of default or a default judgment.

RULE C - 30. SUMMARY JUDGMENT

Any time twenty days after commencement of an action, any party may move the Court

for summary judgment as to any or all of the issues presented in the case and such shall be granted by the Court if it appears that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

RULE C - 31. DECLARATORY JUDGMENT

In a case of actual controversy within the jurisdiction of the Sac and Fox Tribe of the Mississippi in Iowa Tribal Court, the Court may, upon the filing of an appropriate pleading, declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such. The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. The Court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar.

RULE C - 32. ENTRY AND SATISFACTION OF JUDGMENT

- a. *Signature.* Judgment upon a jury verdict shall be signed by the Clerk and filed. All other judgments shall be signed by the judge and filed with the Clerk.
- b. *Entry.* A judgment is complete and shall be deemed entered for all purposes when it is signed and filed as provided herein. The Clerk shall immediately make a notation of the judgment in the register of actions and the judgment docket. The Clerk shall provide notice of entry of judgment to all parties without counsel or to all counsel if parties are so represented. An award of costs or fees need not be contained within the judgment, and costs and fees may be awarded by subsequent order of the Court. Entry of an award of costs or fees does not restart or extend the period for appeal from the judgment.
- c. *Judgment after death.* If a party dies after hearing and before judgment, judgment may nevertheless be entered thereon.
- d. *Satisfaction of Judgment.* A judgment may be satisfied, in whole or in part, as to any or all of the judgment debtors by the owner thereof or her/his counsel of record executing under oath and filing an acknowledgment of satisfaction specifying the amount paid and whether such is a full or partial satisfaction. A judge may order the entry of satisfaction upon proof of payment and failure of the judgment creditor to file a satisfaction. The Clerk shall file all satisfactions of judgment and note the amount thereof in the register of actions and the judgment docket.
- e. *Renewal of judgment.* A judgment satisfied in whole, with such fact being entered in the judgment docket, shall cease to operate as such. A partially satisfied judgment or unsatisfied judgment shall continue in effect for eight years or until satisfied. An action to renew the judgment remaining unsatisfied may be

maintained anytime prior to the expiration of eight years and will extend the period of limitations an additional eight years, provided that only one renewal of the judgment may be granted.

RULE C - 33. NEW TRIALS; AMENDMENTS OF JUDGMENT

- a. *Time and Grounds.* Any party may petition for a new trial on any or all of the issues presented by filing and serving a motion not later than ten days after the entry of judgment, for any of the following causes:
 - i. Error or irregularity which prevented any party from receiving a fair trial; or
 - ii. Misconduct of the jury or jury member(s); or
 - iii. Accident or surprise, or newly discovered evidence which ordinary prudence could not have revealed to produce at trial; or
 - iv. Damages so excessive or inadequate that they appear to have been given under the influence of passion or prejudice; or
 - v. Error in law.
- b. *Supporting papers.* Parties may include memoranda or affidavits in support of their motions to which responsive memoranda and affidavits shall be allowed.
- c. *Court authority to act sua sponte.* The Court may, on its own initiative, not later than ten days after entry of judgment, order a new trial on any grounds which may be asserted by a party to the action, and shall specify the reasons for so ordering.
- d. *Motion to alter or amend.* A motion to alter or amend a judgment shall be filed and served no later than ten days after entry of the judgment.

RULE C - 34. RELIEF FROM JUDGMENT OR ORDER

- a. *Clerical mistakes.* Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the Court at any time of its own initiative or on the motion of any party and after such notice as the Court may direct; mistakes may be corrected before an appeal is docketed in the Appellate Court, and thereafter while the appeal is pending may be corrected with leave of the Appellate Court.
- b. *Relief based upon grounds other than clerical mistake.* Upon motion and upon such terms as are just, the Court may, in the furtherance of justice, relieve a party or her/his legal representative from a final judgment, order, or proceeding for the

following reasons:

- i. Mistake, inadvertence, surprise, or excusable neglect;
 - ii. Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 32(a);
 - iii. Fraud, misrepresentation or other misconduct of an adverse party;
 - iv. When, for any cause, the summons in an action has not been personally served upon the defendant and the defendant has failed to appear in said action;
 - v. The judgment is void;
 - vi. The judgment has been satisfied, released, or discharged; or a prior judgment should have prospective application; or
 - vii. Any other reason justifying relief from the operation of the judgment.
- c. *Time for motions.* The motion shall be made within a reasonable time and for reasons (i), (ii), (iii), or (iv), not more than 20 days after the judgment, order, or proceeding was entered or taken. A motion under subsection (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a Court to entertain an independent action to relieve a party from a judgment, order or proceeding or to set aside a judgment for fraud upon the Court. The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

RULE C - 35. STAY OF PROCEEDINGS TO ENFORCE A JUDGMENT

- a. *Immediate enforcement.* Proceedings to enforce a judgment may issue immediately upon the entry of the judgment, unless the Court in its discretion and on such conditions for the security of the adverse party as are proper, otherwise directs.
- b. *Stay on motion for new trial or to alter judgment.* In its discretion and on such conditions for the security of the adverse party as are proper, the Court may stay the execution of, or any proceedings to enforce, a judgment pending the disposition of a motion for a new trial or to alter or amend a judgment or of a motion for relief from a judgment or order, or of a motion for judgment in accordance with a motion for a directed verdict, or of a motion for amendment to the findings or for additional findings
- c. *Injunction pending appeal.* When an appeal is taken from an interlocutory or final

judgment granting, dissolving, or denying an injunction, the Court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such conditions as it considers proper for the security of the rights of the adverse party.

- d. *Stay upon appeal.* When an appeal is taken the appellant, by giving a bond in an amount set by the Court, may obtain a stay, unless such a stay is otherwise prohibited by law or these rules. The bond may be given at or within ten days after the time of filing the notice of appeal. The stay is effective when the bond is received and approved by the Court.
- e. *Stay in favor of the Tribe or agency thereof.* When an appeal is taken by the Tribe, or an officer or agency of the Tribe, and the operation or enforcement of the judgment is stayed, no bond, obligation, or other security shall be required from the appellant.
- f. *Stay of judgment as to multiple claims or multiple parties.* When a Court has ordered a final judgment on some but not all of the claims presented in the action, the Court may stay enforcement of that judgment until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered.
- g. *Posting and waiver of bond.* In all cases, the parties may, by written stipulation, waive the requirements of this Rule with respect to the filing of a bond or undertaking. In all cases where an undertaking is required by these rules a deposit in Court in the amount of such undertaking, or such lesser amount as the Court may order is equivalent to the filing of the undertaking.

RULE C - 36. INJUNCTIONS

- a. *Preliminary injunction; notice.* No preliminary injunction shall be issued without notice to the adverse party.
- b. *Temporary restraining order; notice.* No temporary restraining order shall be granted without notice to the adverse party unless it clearly appears from specific facts shown by affidavit or by the verified petition or complaint that immediate and irreparable injury, loss, or damage will result to the applicant before notice can be served and a hearing had thereon. Every temporary restraining order granted without notice shall:
 - i. be endorsed with the date and hour of issuance;
 - ii. be filed forthwith in the Clerk's office and entered of record;

- iii. define the injury and state why it is irreparable and why the order was granted without notice;
 - iv. expire by its terms within such time after entry, not to exceed fifteen days, as the Court fixes, unless within the time fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record.
- c. *Time for hearing.* In case a temporary restraining order is granted without notice, the motion for a preliminary injunction shall be set down for hearing at the earliest possible time and takes precedence of all matters except older matters of the same character; and when the motion comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for preliminary injunction and, if she/he does not do so, the Court shall dissolve the temporary restraining order. On two days notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the Court may prescribe, the adverse party may appear and move its dissolution or modification and in that event the Court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.
- d. *Security.* Except as otherwise provided by law, no restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the Court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. No such security shall be required of the United States, the Sac and Fox Tribe of the Mississippi in Iowa, or of an officer, or agency, of either; nor shall it be required of a married person in a suit against the other party to the marriage contract. Nothing in this section shall be construed to give the Sac and Fox Tribe of the Mississippi in Iowa Tribal Court jurisdiction over the United States or its employees operating within the scope of their employment.
- e. *Bond.* A surety upon a bond or undertaking under this rule submits herself/himself to the jurisdiction of the Court and irrevocably appoints the Clerk of the Court as her/his agent upon whom any paper affecting her/his liability on the bond or undertaking may be served. Her/his liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the Court prescribes may be served on the Clerk of the Court who shall forthwith mail copies to the persons giving the security if their addresses are known
- f. *Order.* Every order granting an injunction and every restraining order shall be specific in terms; shall describe in reasonable detail, and not reference to the petition or complaint or other document, the act or acts sought to be restrained;

and is binding only upon the parties to the action, their officers, agents, servants, employees, counsels, or attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

- g. *Grounds for granting.* An injunction may be granted:
- i. When it appears by the pleadings on file that a party is entitled to the relief demanded, and such relief, or any part thereof, consists of restraining the commission or continuance of some act complained of, either for a limited period or perpetually;
 - ii. When it appears from the pleadings or by affidavit that the commission or continuance of some act during the litigation would produce irreparable injury to the party seeking injunctive relief;
 - iii. When it appears during the litigation that either party is doing or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the rights of another party respecting the subject matter of the action, and tending to render the judgment ineffectual;
 - iv. In all other cases where an injunction would be proper in equity.

RULE C - 37. EXTRAORDINARY WRITS

- a. *Grounds for granting.* Where no other plain, speedy and adequate remedy exists, relief may be obtained by seeking an extraordinary writ which may be granted for any one of the following grounds:
- i. Where any person usurps, intrudes into, or unlawfully holds or exercises a public office or does or permits to be done any act which by law works a forfeiture of her/his office; or
 - ii. Where an inferior tribunal, board or officer exercising judicial or ministerial functions has exceeded its jurisdiction or abused its discretion; or
 - iii. Where the relief sought is to compel any inferior tribunal, board or person to perform an act which the law specially enjoins as a duty resulting from an office, trust or station; or to compel the admission of a party to the use and enjoyment of a right or office to which she/he is entitled and from which she/he is unlawfully excluded by such inferior tribunal, board or person; or
 - iv. Where the relief sought is to arrest the proceedings of any tribunal, board

or person, whether exercising functions judicial or ministerial, when such proceedings are without or in excess of the jurisdiction of such tribunal, board or person.

- b. *Sovereign immunity.* No extraordinary writ may issue against the Tribe, or tribal officer or official, or any entity owned by the Tribe in its governmental capacity absent an unequivocally expressed waiver of the Tribe's sovereign immunity from suit.

RULE C - 38. EXECUTION OF JUDGMENT

- a. *Execution on Personal Property.* If within thirty days after entry of a judgment awarding money damages and/or costs against a party, or within ten days after final resolution of an appeal to the Appellate Court from such a judgment, it is made to appear to the Court that the judgment debtor has not paid the judgment amount in full or commenced making installment payments in a manner agreed to by the parties, or is not current in such payments, the Court shall upon motion of the judgment creditor, heard ex parte, order the local law enforcement to execute on the personal property of the judgment debtor as provided herein
- b. *Examination of Debtor.* The Court shall order the judgment debtor to appear before it and answer under oath regarding all her/his personal property. The Court shall then determine what property of the judgment debtor is available for execution and order the local police department to seize as much of such property as reasonably appears necessary to pay the judgment amount. Failure of the judgment debtor to appear may be deemed a contempt of court and the Court may proceed without such appearance. Sale of the seized property shall be at public auction conducted by local law enforcement officials designated by the Court after giving at least ten days public notice posted in at least three conspicuous public places. Property shall be sold to the highest bidder who shall make payment for the property at the time of sale. The person conducting the auction may postpone such in her/his discretion if there is inadequate response to the auction or the bidding, and may reschedule such upon giving the required notice. The person conducting the sale shall give a certificate of sale to the purchaser and shall make a return to the Court reciting the details of the sale.
- c. *Seizure of Property; limitations.* The Court shall only order seizure and sale of such property of the judgment debtor to satisfy a money judgment the loss of which will not impose an immediate substantial hardship on the immediate family of the judgment debtor. Only property of the judgment debtor herself/himself may be subject to execution and not property of her/his family.
- d. *Redemption.* At any time within six months after sale under this Rule, the judgment debtor may redeem her/his property from the purchaser thereof by paying the amount such purchaser paid for the property plus eight percent interest,

plus any expenses actually incurred by the purchaser, such as taxes and insurance, to maintain the property

- e. *Limitation on authority of non-Tribal Officers to Execute.* Any order of the Court to local law enforcement officials within the Court's jurisdiction, in aid of execution of judgments, shall only be valid upon the execution of a cooperative agreement between the Tribe and the appropriate governing entity if such law enforcement is not Sac and Fox Tribe of the Mississippi in Iowa.

SAC AND FOX TRIBE OF THE MISSISSIPPI IN IOWA TRIBAL COURT RULES

RULES OF APPELLATE PROCEDURE

RULE A - 1. APPELLATE PANEL

All appeals from the Sac and Fox Tribe of the Mississippi in Iowa Tribal Court shall be heard by the Sac and Fox Tribe of the Mississippi in Iowa Appellate Court. The Chief Justice of the Court of Appeals shall appoint an appellate panel for each appeal.

RULE A - 2. APPEALABLE ORDERS

Any party who is aggrieved by an appealable order, as defined in tribal code section 5-4401 may appeal in the manner prescribed by this Rule.

RULE A - 3. TIME FOR APPEAL

Within thirty days from the entry of the order of judgment appealed from the party taking the appeal must file with the Trial Court a written notice of appeal specifying the parties to the appeal, the order or judgment which is being appealed, and a short statement of the reason or grounds for the appeal, and must serve the notice of appeal on all other parties to the case.

RULE A - 4. CAPTION AND DESIGNATION OF PARTIES

The party taking the appeal shall be referred to as the appellant; all other parties shall be referred to as the appellees. The name of the case shall be the same as that used in the Trial Court.

RULE A - 5. STAY PENDING APPEAL

In any case in which an appeal is perfected as required by this Rule, the appellant may petition the Trial Court for an order staying the order, commitment or judgment rendered conditioned upon posting of cash bond or other bond to guarantee performance of the judgment, order or commitment. A stay upon condition of posting bond shall be granted in all cases in which it is requested unless manifest injustice would result therefrom.

RULE A - 6. DOCKETING

Within five days after a Notice of Appeal is filed, the Clerk of the Trial Court shall prepare, certify and file with the Appellate Court all papers comprising the record of the case appealed. A separate docket shall be maintained for the Appellate Court in which shall be recorded each stage of the proceedings on each case appealed.

RULE A - 7. POWERS OF THE COURT OF APPEALS

The presiding justice of the Appellate Court shall, when hearing a case, have authority to compel the production of documents where such is deemed necessary to the rendition of the Court's opinion. There shall not be a new trial in the Appellate Court. The Appellate Court may review both the factual findings and conclusions of law of the Trial Court. The Appellate Court may hear and grant motions as appropriate.

RULE A - 8. BRIEFS

- a. *Time for Filing.* Within thirty days of the filing of the Notice of Appeal or within such longer time as the Appellate Court shall allow, the appellant shall file a written brief, memorandum or statement in support of her/his appeal. An original and three copies shall be filed with the Clerk and one additional copy shall be served upon or mailed to each other separately represented party or her/his counsel. The appellee shall have thirty days after receipt of the appellant's brief, memorandum or statement within which to file a response, memorandum or statement. A reply brief, memorandum or statement of appellant shall be allowed without leave of Court. Such reply brief shall be filed within ten days of the receipt of the appellee's response.
- b. *Format.* The opening brief shall contain, under separate heading in the order specified, a table of contents, table of authorities, summary of the argument; statement of facts, statement of procedural history; and legal argument. The response and reply briefs be organized in the same manner, except that a statement of facts or statement of procedural history are not required.
- c. *Page Limitations.* The opening brief and response brief shall be not exceed 30 pages exclusive of tables, except with permission of the Court. The reply brief shall not exceed 15 pages, exclusive of tables, except with permission of the Court.

RULE A - 9. ORAL ARGUMENT

The Appellate Court shall decide all cases upon the briefs, memoranda and statements filed plus the record of the Trial Court without oral argument unless either party requests oral argument and shows to the Court that such will aid the Court's decision, or unless the Court decides on its own motion to hear oral argument.

RULE A - 10. DECISION

The Appellate Court shall issue a written decision and all judgments on appeal shall be final.